

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CORE WIRELESS LICENSING)
S.A.R.L.) DOCKET NO. 6:12cv100

-vs-)
Tyler, Texas
11:17 a.m.
APPLE INC.) March 16, 2015

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE RODNEY GILSTRAP,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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20 Proceedings taken by Machine Stenotype; transcript was
21 produced by a Computer.

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 All right. Are the parties prepared to read into
6 the record those items from the pre-admitted exhibits used
7 during the last portion of the trial?

8 MR. MUELLER: Yes, Your Honor.

9 THE COURT: All right. Defendant may proceed with
10 their list.

11 MR. MUELLER: Defendant -- the Defendant's list is
12 DX 29, DX 49, DX 56, DX 60, DX 61, DX 102, DX 103, DX 153,
13 DX 165, DX 166, DX 171, DX 182, DX 239, and PX 243.

14 THE COURT: All right. Is there objection from the
15 Plaintiff as to that rendition from the Defendant?

16 MS. DE MORY: No objection, Your Honor.

17 THE COURT: All right.

18 MS. DE MORY: And I would like to introduce
19 Ms. Curtis, who will be speaking on the jury instructions for
20 us.

21 THE COURT: All right. Does Plaintiff have any
22 additional exhibits to read into the record?

23 MS. CURTIS: We do. Just one additional exhibit,
24 Your Honor, on Monday. PX 23 was read into the record or
25 introduced to the jury through Dr. Malkamaki; and we've

1 conferred with the Defendants on that, and they have no
2 objection.

3 MR. MUELLER: No objection.

4 THE COURT: All right. All right. Then we'll
5 proceed with the formal charge conference. As counsel is
6 aware, the Court's previously met with representatives of
7 both of the parties and conducted a lengthy and informal
8 charge conference in which the last joint submission from the
9 parties as to the final jury instructions and verdict form
10 were reviewed in detail.

11 Each side was given a full opportunity to express
12 themselves, offer any comments both as to matters included in
13 that joint submission and any matters that were late arising
14 and might not have been submitted that they wish to include.

15 The Court's considered the comments and input from
16 both Plaintiff and Defendant and has generated its final jury
17 instructions, which you now have and have had an opportunity
18 to review.

19 We'll now conduct a formal charge conference on the
20 record wherein a representative of both sides will address
21 the Court with any formal objections that either side wishes
22 to offer with regard to the instructions and the verdict form
23 as you now have them.

24 If whoever is going to speak for both Plaintiff and
25 Defendant will go to the podium, we'll proceed with the

1 formal charge conference at this time.

2 All right. We'll start with the final jury
3 instructions. Page 1 is just simply the title with the style
4 of the case. Actually, the cover sheet is numbered as Page 1
5 and the first sheet is not numbered. So I'll change that,
6 and we'll take the one off the cover sheet and make the first
7 page inside Page 1.

8 And with that, are there any objections from either
9 party with regard to anything on Page 1 of the jury
10 instructions?

11 MS. CURTIS: No objections from the Plaintiff, Your
12 Honor.

13 MS. VREELAND: No objections for Apple either.

14 THE COURT: We'll turn to Page 2. Any objections
15 from either party?

16 MS. CURTIS: No objections for Plaintiff.

17 MS. VREELAND: No objection for Apple.

18 THE COURT: Page 3, any objections from either
19 party?

20 MS. CURTIS: No objection, Your Honor.

21 MS. VREELAND: No objection.

22 THE COURT: Turning then to Page 4 of the final
23 jury instructions, any objection from either Plaintiff or
24 Defendant?

25 MS. CURTIS: I noticed on this page, actually, Your

1 Honor -- and this a comment throughout in the beginning -- or
2 in the middle of the page -- the beyond a reasonable doubt is
3 in quotes. There's several other quotes and brackets and
4 formatting that's --

5 THE COURT: And those are going to be -- quotes are
6 all going to be removed in what I give to the jury. That's
7 just -- I didn't have time to do that.

8 The footnotes that you cited in your joint
9 submission have been removed. The quotation marks that were
10 given rise to in those footnotes, haven't come out yet; but I
11 will take them out in the final version that the jury
12 receives.

13 MS. CURTIS: Understood. Thank you.

14 MS. VREELAND: And, Your Honor, Apple objects to
15 what I think may have been an inadvertent error on Page 4 in
16 the fourth to last paragraph that begins: The Plaintiff Core
17 Wireless has the burden of proving patent infringement and
18 damages by a preponderance of the evidence.

19 The next sentence begins: Both Core Wireless, the
20 Plaintiff, and Apple, the Defendant, have the burden of
21 proving breach of contract by a preponderance of the
22 evidence.

23 We believe that the reference to Core Wireless
24 should come out, since it appears that Your Honor is only
25 instructing on the Apple breach-of-contract claim.

1 THE COURT: All right. Then I'll change that
2 sentence to Apple, the Defendant, also has the burden of
3 proving breach of contract by a preponderance of the
4 evidence.

5 MS. VREELAND: Thank you, Your Honor.

6 THE COURT: Anything else on Page 4 from either
7 Plaintiff or Defendant?

8 MS. CURTIS: No, Your Honor.

9 THE COURT: Turn then to Page 5. Any objections
10 from either party on Page 5?

11 MS. CURTIS: No objection, Your Honor.

12 MS. VREELAND: No objection.

13 THE COURT: All right. Turning then to Page 6, any
14 objection from either party to anything on Page 6 of the jury
15 instructions?

16 MS. CURTIS: No objection, Your Honor.

17 MS. VREELAND: No objection.

18 THE COURT: Page 7.

19 MS. CURTIS: Yes, Your Honor. The -- right before
20 the very last sentence on Page 7, we believe that there was
21 an omission to agreed language in the parties' proposed jury
22 instruction, which was Docket 395; and that was on Page 11 of
23 that docket entry.

24 And there was a sentence that started -- or that
25 read: Claims are presumed to cover one or more embodiments

1 described in the specification.

2 And the parties did not dispute that language.

3 We also object to the omission of the sentence that
4 followed in the Docket 395, which we proposed a sentence that
5 started: A reading that would exclude the preferred
6 embodiment is rarely, if ever, correct and would require a
7 highly persuasive evidentiary support.

8 As an alternative proposal to that, Plaintiff would
9 also propose: A reading that would exclude the description
10 or examples in the specification as rarely, if ever, correct
11 and would require highly persuasive evidentiary support.

12 MS. VREELAND: And, Your Honor, we would object to
13 that language for the reasons previously stated.

14 THE COURT: Well, the Court determined that the
15 objected-to language should not be included; and without
16 that, the preceding sentence seemed inappropriate. And
17 that's why the Court intentionally took out that sentence,
18 even though the parties had not previously disputed it.

19 So I'll overrule the Plaintiff's objection as to
20 that matter on Page 7.

21 Anything else before we go to Page 8?

22 MS. CURTIS: Nothing further.

23 MS. VREELAND: Nothing from Apple.

24 THE COURT: Then turn to Page 8, if you will. Are
25 there any objections from either party to anything on Page 8

1 of the instructions?

2 MS. CURTIS: No objection, Your Honor.

3 MS. VREELAND: No objection.

4 THE COURT: Page 9?

5 MS. CURTIS: No objection.

6 MS. VREELAND: No objection.

7 THE COURT: Page 10?

8 MS. CURTIS: No objection, Your Honor.

9 MS. VREELAND: No objection.

10 THE COURT: Page 11?

11 MS. CURTIS: No objection.

12 MS. VREELAND: No objection.

13 THE COURT: Page 12?

14 MS. CURTIS: No objection, Your Honor.

15 MS. VREELAND: No objection, Your Honor.

16 THE COURT: Page 13?

17 MS. CURTIS: Yes, Your Honor. Plaintiffs object to
18 the last two paragraphs on Page 13 that carries over into
19 also the first paragraph on Page 14, which was Apple's
20 proposal on multiple alleged infringers.

21 We believe this is not an issue in this case, as
22 Core Wireless has never alleged that multiple parties
23 infringe the claims.

24 THE COURT: Well, the Court believes that
25 instruction is appropriate, and the objection by the

1 Plaintiff is overruled.

2 MS. VREELAND: Your Honor, Apple also had an
3 objection to Page 13, and that is the second full paragraph
4 that begins: Core Wireless alleges that all of the claims of
5 the '022, '664, '143, and '850s patents recite the capability
6 to perform a function.

7 We object to that sentence and the complete
8 paragraph after it on the ground that this principle does not
9 apply to our case. The claims in issue use the language
10 adapted to, and -- and configured to.

11 And under the cases previously cited to the Court,
12 including Phoenix v. West and Aspex v. Marchon, because of
13 the language "adapted to," the -- the capability issue is not
14 appropriate for the instructions.

15 And, Your Honor, we also -- so we would object to
16 the inclusion.

17 And, Your Honor, we also would propose additional
18 language if this is concluded -- if this is included.

19 THE COURT: Well, this is a matter we discussed in
20 the informal charge conference. Apple made its objections to
21 this paragraph then and offered additional or alternative
22 language.

23 The Court has determined that this language is
24 appropriate and accurate and will overrule for the record
25 Apple's objection, as well as any other offering by Apple in

1 this regard.

2 MS. VREELAND: And may we, Your Honor, just state
3 what our additional language was for purposes of the record?

4 THE COURT: It's the same language that was in your
5 joint submission that's previously been filed, is it not?

6 MS. VREELAND: Yes, Your Honor.

7 THE COURT: Are you not satisfied that that
8 preserves the point?

9 MS. VREELAND: As long as it's clear that the
10 language on Claim -- Page 18 of our prior submission is the
11 language that we are proposing be added.

12 THE COURT: Duly noted.

13 MS. VREELAND: Thank you, Your Honor.

14 THE COURT: All right. Anything else before we
15 move on on this page?

16 MS. CURTIS: Nothing further from Plaintiffs, Your
17 Honor.

18 THE COURT: We'll turn to Page 14 of the final jury
19 instructions. Any objection from either party on Page 14?

20 MS. CURTIS: Only the objection previously noted,
21 Your Honor, in the first paragraph.

22 THE COURT: Duly noted. Anything --

23 MS. VREELAND: No --

24 THE COURT: -- from Defendant?

25 MS. VREELAND: No objection from Defendant.

1 THE COURT: All right. Turn then to Page 15, if
2 you will. Any objection from either party here?

3 MS. CURTIS: Yes, Your Honor. At the end of the
4 second full paragraph, I believe that there was an
5 agreed-upon sentence in the prior submission at Page 21.

6 Previously, Apple noted an objection to the last
7 sentence of that paragraph; but I believe this morning at the
8 informal charge conference they stated that they were
9 agreeable to the last sentence, which is: Further, the same
10 element or method step of the accused product or method may
11 satisfy more than one element of a claim.

12 THE COURT: And you're suggesting that go at the
13 end of the second paragraph; is that correct?

14 MS. CURTIS: That's correct, Your Honor. The
15 second paragraph that starts "in deciding whether."

16 THE COURT: What's Apple's position on that?

17 MS. VREELAND: We would have no objection, Your
18 Honor.

19 THE COURT: All right. Plaintiff's counsel, give
20 me that wording again --

21 MS. CURTIS: Certainly.

22 THE COURT: -- slowly enough for me to write it
23 down.

24 MS. CURTIS: You got it. Further, comma, the same
25 element or method step of the accused product or method may

1 satisfy more than one element of a claim.

2 THE COURT: Of a claim?

3 MS. CURTIS: Correct.

4 THE COURT: All right. Without objection, I'll add
5 that language at the end of Paragraph 2.

6 MS. CURTIS: Thank you, Your Honor.

7 THE COURT: Anything else on Page 15 from either
8 party?

9 MS. CURTIS: Nothing further.

10 MS. VREELAND: No objections from Apple, Your
11 Honor.

12 THE COURT: All right. Then turn to Page 16, if
13 you will. Are there any objections from either party as to
14 anything included on Page 16?

15 MS. CURTIS: No objection from Core Wireless.

16 MS. VREELAND: Your Honor, we had one objection --
17 well, two objections, one which would be a request for the
18 inclusion of additional language.

19 So our first objection would be for the inducement
20 instructions that end midway through the page. We object to
21 the absence of the statement that evidence of a good-faith
22 belief of non-infringement can be evidence that Apple lacks
23 the required intent for induced infringement.

24 THE COURT: And that objection is overruled.

25 MS. VREELAND: And, secondly, Your Honor, we would

1 just like to preserve our objection on the willfulness
2 instruction.

3 We object to will -- to the jury being instructed
4 on willfulness on the grounds that the Plaintiffs have not
5 established an objective basis for willfulness.

6 THE COURT: Why don't we do this, Ms. Vreeland:
7 The Court will recognize that anything that the Defendant
8 included in its last joint submission on proposed jury
9 instructions and verdict form that are not included in what
10 the Court adopts and gives to the jury, are objected to by
11 the Defendant; and that objection is not waived.

12 MS. VREELAND: Thank you, Your Honor.

13 THE COURT: Will that satisfy you?

14 MS. VREELAND: Yes. Thank you, Your Honor.

15 THE COURT: All right. Anything else on Page 16?

16 MS. CURTIS: Nothing further from Plaintiff.

17 THE COURT: Then we'll turn to Page 17. Any
18 objection from either party to anything on Page 17 of the
19 jury instructions?

20 MS. CURTIS: No objection, Your Honor.

21 MS. VREELAND: No -- well, the objection previously
22 stated to the willfulness instructions, but Your Honor has
23 already considered that.

24 THE COURT: All right. Then we'll turn to Page 18.

25 Anything from either party on Page 18?

1 MS. CURTIS: No, Your Honor.

2 MS. VREELAND: No objections other than the
3 addition of language that Your Honor already recognized the
4 objection for.

5 THE COURT: Okay. Next is Page 19. Any objection
6 from either party to anything on Page 19?

7 MS. CURTIS: No objection for Plaintiff, Your
8 Honor.

9 MS. VREELAND: No objection from Defendants, other
10 than the additional language, Your Honor, which you've
11 already recognized.

12 THE COURT: All right. And I'll note for the
13 record, for the benefit of both parties, any language or text
14 offered by either Plaintiff or Defendant in the last joint
15 submission of the proposed final jury instructions and
16 verdict form from either party that's not included in the
17 Court's final adopted jury instructions and verdict form,
18 I'll note that you object to my failure to include it or my
19 modification of it, and that objection is not waived as part
20 of this formal charge conference.

21 MS. VREELAND: Thank you, Your Honor.

22 THE COURT: All right. Let's turn to Page 20.

23 Any objection from either party to anything on Page
24 20 of the verdict -- of the final jury instructions?

25 MS. CURTIS: No objection, Your Honor.

1 MS. VREELAND: No objection.

2 THE COURT: Page 21?

3 MS. CURTIS: No objection.

4 MS. VREELAND: No objection.

5 THE COURT: Page 22?

6 MS. CURTIS: No objection.

7 MS. VREELAND: No objection.

8 THE COURT: Page 23?

9 MS. CURTIS: No objection.

10 MS. VREELAND: No objection.

11 THE COURT: Page 24?

12 MS. CURTIS: May I just have one moment to confer?

13 I apologize, Your Honor.

14 THE COURT: Take a moment.

15 MS. CURTIS: I apologize. No objection on 24, Your

16 Honor.

17 THE COURT: Any objection from the Defendant on 24?

18 MS. VREELAND: No objection.

19 THE COURT: Then we'll turn to Page 25. Any
20 objection here from either party?

21 MS. CURTIS: Yes, Your Honor. We object to the
22 second to last sentence in the first paragraph, which is: In
23 deciding what amount of -- is a FRAND royalty, you may
24 consider any evidence of patent hold-up and royalty stacking
25 as previously stated in our submission yesterday following

1 the jury instructions.

2 THE COURT: All right. That -- that objection is
3 overruled.

4 Anything from Defendant?

5 MS. VREELAND: Yes, Your Honor.

6 We do believe that the -- the Georgia-Pacific
7 factors that have been given, that several of them should
8 have a small amount of additional language consistent with
9 the Ericsson versus D-Link case; and I can propose that
10 language to the Court.

11 THE COURT: Is this something that was included in
12 your last joint submission that we talked about in the
13 informal charge conference, or is this -- this subsequent to
14 that?

15 MS. VREELAND: I think it's different, Your Honor.
16 Your Honor chose the Georgia-Pacific factors that the
17 Plaintiff had proposed, and we had some small modifications
18 that we'd like to propose to this version of the
19 Georgia-Pacific factors.

20 THE COURT: All right. Give me those proposed
21 modifications.

22 MS. VREELAND: So for the first factor, we would
23 propose adding the words "if any," "the royalties received by
24 the patentee, comma, if any."

25 THE COURT: All right. What else?

1 MS. VREELAND: For the fourth factor, Your Honor,
2 we would suggest adding the clause at the end "taking into
3 account only the value of the patented technology and not the
4 value of the standard."

5 THE COURT: All right. What other additions to the
6 Georgia-Pacific factors that I've listed here do you want to
7 propose?

8 MS. VREELAND: The others are on Page 26, Your
9 Honor. So Georgia-Pacific Factor 6 on Page 26, we would
10 propose --

11 THE COURT: You understand these are not the
12 factors -- this is not 6 as to the Georgia-Pacific cases.
13 This is 6 from this instruction because all 15 factors are
14 not here.

15 MS. VREELAND: Yes. I apologize. What you've
16 labeled as the sixth factor is the one --

17 THE COURT: Just so we're clear what we're talking
18 about.

19 MS. VREELAND: Yes. I think it's Georgia-Pacific
20 11; but in these instructions, 6.

21 And we would also propose adding the same language
22 at the end, "taking into account the value of the patented
23 technology and not the value of the standard."

24 THE COURT: What else?

25 MS. VREELAND: On the next factor in the Court's

1 instructions, Factor 7, we would propose adding at the end
2 the clause, "also covered by standard essential patents."

3 THE COURT: All right. What else?

4 MS. VREELAND: For the Court's Factor 8, we would
5 propose adding at the end "or the value of the
6 standardization of the patented technology."

7 THE COURT: What else?

8 MS. VREELAND: And for the Court's Factor 10, we
9 would propose adding -- midway through the first sentence
10 where it begins "if both sides had been reasonably and
11 voluntarily trying to reach an agreement," we would propose
12 changing that to, "if both sides were considering the FRAND
13 commitment and its purposes and both were -- both had been
14 reasonably and voluntarily trying to reach an agreement."

15 THE COURT: Anything else?

16 MS. VREELAND: No, Your Honor.

17 THE COURT: All right. Those objections are
18 overruled.

19 Anything else on Page 26 from either party?

20 MS. CURTIS: No, Your Honor.

21 MS. VREELAND: No, nothing from Apple.

22 THE COURT: All right. Then we'll turn to Page 27.
23 Any objections from either party here?

24 MS. CURTIS: Nothing, Your Honor, from Plaintiffs.

25 MS. VREELAND: No objections from Apple.

1 MS. CURTIS: With -- sorry -- with the exception
2 that the italicized words will also be --

3 THE COURT: All of the italics will come out.

4 MS. CURTIS: Thank you.

5 THE COURT: Anything else on Page 28 then?

6 MS. CURTIS: Yes, Your Honor. Core Wireless
7 objects to the first paragraph, which is the inclusion of the
8 lump-sum instruction as we believe that there has not been
9 any evidence in the record about lump sum.

10 THE COURT: All right. That objection is
11 overruled.

12 Anything else from either Plaintiff or Defendant on
13 Page 28?

14 MS. VREELAND: No objections, Your Honor.

15 THE COURT: All right. Turning to Page 29, any
16 objection there?

17 MS. CURTIS: Your Honor, I guess the -- sorry.

18 This goes to Page 28 and 29 for Plaintiffs. We
19 just want to note that we object to the inclusion of the
20 Court's instruction on contract claims for Apple's
21 breach-of-contract allegation on our basis that we don't
22 believe that they have stated the -- or provided the evidence
23 for that claim; and, of course, object to the Court's
24 deletion of our contract claim for Core Wireless, which was
25 part of the previous submission.

1 THE COURT: Well, we discussed that at length in
2 the informal charge conference. While I note your
3 objections, your objections are overruled.

4 MS. CURTIS: Thank you.

5 THE COURT: Then we'll turn to Page 29 to make sure
6 there's not anything else there. Any objection from
7 Plaintiff or Defendant to anything on Page 29 not previously
8 mentioned?

9 MS. CURTIS: No, Your Honor.

10 MS. VREELAND: No objections from Apple.

11 THE COURT: Page 30?

12 MS. CURTIS: No objection.

13 MS. VREELAND: No objection.

14 THE COURT: And Page 31?

15 MS. CURTIS: No objection, Your Honor.

16 MS. VREELAND: No objection from Apple, Your Honor.

17 THE COURT: All right. Then I'll ask you to turn
18 to the proposed verdict form. Likewise, this was discussed
19 at length in the informal charge conference, and we'll --
20 we'll address this in the same way that we addressed the
21 final jury instructions.

22 Is there objection from either party as to Page 1
23 of the verdict form?

24 MS. CURTIS: No objection, Your Honor.

25 MS. VREELAND: No objection.

1 THE COURT: Page 2, which contains Question 1 to
2 the jury, any objection from either side?

3 MS. CURTIS: No objection.

4 MS. VREELAND: No objection.

5 THE COURT: Page 3 of the verdict form?

6 MS. CURTIS: No objection.

7 MS. VREELAND: No objection.

8 THE COURT: Page 4?

9 MS. CURTIS: No objection.

10 MS. VREELAND: No objection.

11 THE COURT: Page 5?

12 MS. CURTIS: No objection.

13 MS. VREELAND: Your Honor, we would have an
14 objection to the sentence at the top, which instructs the
15 jury that they should consider this question if they answered
16 yes to 1.

17 We believe they would only need to answer this
18 question if they had answered yes to 1, which is the
19 infringement question, and no for 2 or 3, which are the
20 invalidity questions.

21 So they would only need to answer this if they had
22 found both that it was infringed and it was not invalid.

23 THE COURT: Okay. That's at the top of Page 5?

24 MS. VREELAND: Yes, Your Honor.

25 THE COURT: Are you offering me specific language,

1 Ms. Vreeland?

2 MS. VREELAND: Yes, Your Honor. It would be:
3 Answer this question only as to those claims you answered yes
4 for in Questions -- in Question 1 and no for Questions 2 and
5 3.

6 THE COURT: Is there objection to that from Core
7 Wireless?

8 MS. CURTIS: I think -- I think that that was the
9 reason we had submitted our proposed verdict form in the
10 order that we discussed this morning for clarity for the
11 jury. But I think it's up to Your Honor if you decide that
12 it's too confusing for the jury one way or the other.

13 THE COURT: All right. I'll grant that suggested
14 change, and I'll adjust the instruction at the top of Page 5,
15 prior to Question 4, to include a negative answer to
16 Questions 2 and 3. I mean, I'll use exactly the verbiage you
17 gave me, but I'll adopt the substance of what you suggested,
18 Ms. Vreeland.

19 MS. VREELAND: Thank you.

20 THE COURT: All right. Let's turn then to Page 6
21 of the verdict form. Is there objection from either party
22 here?

23 MS. CURTIS: No objection to the content. I do
24 notice that there's a typographical error, that Core Wireless
25 should not be pluralized, but no objection to the content.

1 MS. VREELAND: Your Honor, we would object and ask
2 that the question refer to fairly, reasonably, and
3 non-discriminatory compensation.

4 THE COURT: Okay. So let's back up a bit.

5 The Plaintiffs raised a typographical error as to
6 the pluralization of Core Wireless? You're suggesting that
7 it just have an apostrophe and no S at the end?

8 MS. CURTIS: Well, it should just say: Fairly and
9 reasonably compensate Core Wireless for infringement of the
10 Core Wireless patents.

11 THE COURT: Okay. I'll delete the apostrophe and
12 the S at the end of the second line.

13 Ms. Vreeland, you want me to say fairly,
14 reasonably, and non -- non-discriminatorily is what you're
15 asking?

16 MS. VREELAND: Per -- perhaps better phrased, Your
17 Honor, would be, would provide fair, reasonable, and
18 non-discriminatory compensation.

19 I think, Your Honor, our original proposed
20 language -- I was just looking at our original proposal was:
21 What sum of money do you find by a preponderance of the
22 evidence would be a fair, reasonable, and non-discriminatory
23 royalty award to be paid by Apple to Core Wireless for any
24 infringement by Apple you have found?

25 THE COURT: Well, I'm going to overrule the

1 Defendant's objection to Question 5.

2 The Court has clearly charged the jury
3 instructions -- or will charge the jury, instructions on the
4 FRAND obligations; and that's been repeated multiple times.

5 And the omission of the phrase "non-discriminatory"
6 here, I don't think, causes any confusion given the
7 repetitiveness of the FRAND instructions in the charge
8 itself.

9 I will singularize the reference to Core Wireless
10 that the Plaintiff raised. I think that is a typographical
11 error.

12 But other than that, Question 5 will stay as it is.

13 All right. Any objections to Question 6 on Page 7
14 of the verdict form?

15 MS. CURTIS: Yes, Your Honor. I think this goes
16 hand-in-hand with our objections to the lump-sum instruction
17 to the jury. We believe this question should be out
18 completely.

19 THE COURT: And consistent with my prior ruling,
20 I'll -- I'll overrule, or deny Plaintiff's objection in that
21 regard.

22 MS. VREELAND: No objections from Apple, Your
23 Honor.

24 THE COURT: All right. Page 8 of the verdict form
25 where Question 7 is located?

1 MS. CURTIS: And, again, this goes to our objection
2 to the inclusion of the contract instructions for Apple's
3 claims, so we believe this should not be included.

4 MS. VREELAND: Apple has no objections, Your Honor.

5 THE COURT: All right. Plaintiff's objection is
6 overruled.

7 The last page, Page 9, where Question 8 is located.
8 Is there objection?

9 MS. CURTIS: I guess that would be the same
10 objection for us, Your Honor -- Your Honor, that it includes
11 Apple's claim and also that there's an omission of any
12 question to the jury regarding Core Wireless's breach of
13 contract claims.

14 MS. VREELAND: And Apple has no objection, Your
15 Honor.

16 THE COURT: Well, the Court is convinced that the
17 Plaintiff failed to offer adequate proof to -- to support the
18 question that you've objected to not being included in here.

19 And I made that clear, I think, in our informal
20 charge conference. And consistent with that, I'll overrule
21 the Plaintiff's objection, both as to the inclusion of
22 Question 8 and as to the failure to include a reverse
23 question applicable in the opposite direction.

24 All right. That's the last page of the verdict
25 form. I'll make the changes in both the final jury

1 instructions and the verdict form as just covered on the
2 record.

3 It's 13 minutes until noon. I think I can get that
4 done by noon. I'll be back at approximately that time. At
5 that time, I intend to bring in the jury to give them the
6 Court's final instructions and to hear closing arguments from
7 counsel.

8 Mr. Bunsow, who's going to present closing
9 arguments for the Plaintiff in this case?

10 MR. BUNSOW: I will present the initial closing
11 argument, Your Honor, and Mr. Ward will present the rebuttal.

12 THE COURT: Do you have a predetermined division of
13 your total time?

14 MR. BUNSOW: I do, but you know how it goes. If
15 you could give me a warning with 15 minutes remaining, my
16 intention would be to wrap it up and leave as much of that
17 for Mr. Ward as possible.

18 THE COURT: All right. So after you've used -- or
19 at the point you've used 25 minutes of your 40?

20 MR. BUNSOW: That's correct, Your Honor.

21 THE COURT: We'll warn you after the use of 25
22 minutes.

23 MR. BUNSOW: Thank you.

24 THE COURT: Mr. Ward, with whatever Mr. Bunsow
25 leaves you, would you like a warning?

1 MR. WARD: One minute.

2 THE COURT: One-minute warning?

3 Mr. Mueller, are you going to present the entire
4 closing for the Defendant?

5 MR. MUELLER: Yes, I am, Your Honor.

6 THE COURT: Would you like a warning before the
7 expiration of your time?

8 MR. MUELLER: Yes, please, two minutes.

9 THE COURT: Two minutes. All right.

10 All right. With that, the Court will stand in
11 recess while these changes are made, and then we'll proceed
12 to bring in the jury and give them the final jury
13 instructions.

14 The Court stands in recess.

15 COURT SECURITY OFFICER: All rise.

16 (Recess.)

17 (Jury out.)

18 COURT SECURITY OFFICER: All rise.

19 THE COURT: Let's bring in the jury, please.

20 COURT SECURITY OFFICER: All rise for the jury.

21 (Jury in.)

22 THE COURT: Please be seated.

23 Ladies and Gentlemen of the Jury: You've now heard
24 the evidence in this case. I will now instruct you on the
25 law that you must apply.

1 Each of you will have a copy of these final jury
2 instructions for your review when you retire to deliberate in
3 a few minutes.

4 Accordingly, there's no need for you to take
5 written notes on these written -- on these final jury
6 instructions unless you particularly want to do so.

7 It's your duty to follow the law as I give it to
8 you. On the other hand, as I've said previously, you, the
9 jury, are the sole judges of the facts in this case.

10 Do not consider any statement that I have made in
11 the course of the trial or I may make in these instructions
12 as an indication that I have an opinion -- any opinion about
13 the facts of the case.

14 You're about to hear closing arguments from the
15 attorneys. Statements and arguments of the attorneys are not
16 evidence, and they are not instructions on the law. They're
17 intended only to assist the jury in understanding the
18 evidence and the parties' contentions.

19 A verdict form has been prepared for you. You'll
20 take this to the jury room; and when you've reached a
21 unanimous agreement as to your verdict, you will have your
22 foreperson fill in the blanks in the verdict form, date it,
23 and sign it.

24 Answer each question in the verdict form from the
25 facts as you find them to be. Don't decide who you think

1 should win and then answer the questions accordingly. Again,
2 your answers and your verdict in this case must be unanimous.

3 The parties have stipulated or agreed to some facts
4 in this case; and when the lawyers on both sides stipulate to
5 the existence of a fact, you must, unless otherwise
6 instructed, accept the stipulation as evidence and regard the
7 fact as proved.

8 In determining whether any fact has been proven in
9 this case, there are two types of evidence that you may
10 consider in properly finding the truth as to the facts in
11 this case.

12 One is direct evidence, such as the testimony of an
13 eyewitness.

14 The other is indirect or circumstantial evidence;
15 that is, the proof of a chain of circumstance that indicates
16 the existence or non-existence of certain other facts.

17 As a general rule, Ladies and Gentlemen, the law
18 makes no distinction between direct or circumstantial
19 evidence; but simply requires that you find the facts based
20 on the evidence presented, both direct and circumstantial.

21 You may, unless otherwise instructed, consider the
22 testimony of all witnesses regardless of who may have called
23 them and all the exhibits received and admitted into evidence
24 regardless of who may have introduced them in answering any
25 of the questions.

1 By allowing the testimony or other evidence to be
2 introduced over the objection of an attorney, the Court did
3 not indicate any opinion as to the weight or effect of such
4 evidence.

5 As I've said before, you're the sole judges of the
6 credibility of all the witnesses and the weight and effect to
7 give to the evidence in this case.

8 When the Court sustained an objection to a question
9 addressed to a witness, you must disregard that question
10 entirely; and you may draw no inference from or speculate
11 from its wording about what the witness would have said if he
12 or she had been permitted by the Court to answer the
13 question.

14 Now, at times during the trial, it's been necessary
15 for the Court to talk with the attorneys here at the bench
16 and outside of your hearing or by calling a recess and
17 talking to them while you were out of the courtroom.

18 This happened because during the trial, things
19 often arise that do not involve the jury. You shouldn't
20 speculate about what was said during such discussions that
21 took place outside of your presence.

22 Certain testimony in this case has been presented
23 to you through depositions. A deposition is the sworn,
24 recorded answers to questions asked to a witness in advance
25 of trial.

1 If the witness cannot be present to testify in
2 person from the witness stand, then that witness's testimony
3 may be presented under oath in the form of a deposition.

4 Before the trial, the part -- the attorneys,
5 rather, representing the parties for both sides of the case
6 questioned these deposition witnesses under oath. A court
7 reporter was present, and their testimony was recorded.

8 Deposition testimony is entitled to the same
9 consideration as testimony given by a witness in person under
10 oath from the witness stand in open court.

11 Accordingly, you should judge the credibility and
12 weigh the importance of deposition testimony to the best of
13 your ability just as if the witness had testified personally
14 in open court.

15 Ladies and Gentlemen, while you should consider
16 only the evidence in this case, you are permitted to draw
17 such reasonable inferences from the testimony and exhibits as
18 you feel are justified in the light of common experience.

19 In other words, you may make deductions and reach
20 conclusions that reason and common sense lead you to draw
21 from the facts that have been established by the testimony
22 and the evidence in the case.

23 Unless I instruct you to the contrary, the
24 testimony of a single witness may be sufficient to prove any
25 fact, even though a greater number of witnesses may have

1 testified to the contrary, if, after considering all of the
2 evidence, you believe that single witness.

3 When knowledge of a technical subject may be
4 helpful to the jury, a person who has special training or
5 experience in that technical field, called an expert witness,
6 is permitted to state his or her opinions on those technical
7 matters.

8 However, you're not required to accept the opinion
9 or the opinions of any expert witness. As with any witness,
10 it's solely up to you to decide whether to rely or not rely
11 upon what they say.

12 In any lawsuit, the facts must be proved by a
13 required amount of evidence known as the burden of proof.

14 The burden of proof in this case is on the
15 Plaintiff, Core Wireless, for some issues and on the
16 Defendant, Apple, for other issues.

17 As I mentioned at the beginning of the trial, there
18 are two burdens of proof that you will apply in this case.

19 The first is preponderance of the evidence, and the
20 second is clear and convincing evidence.

21 A third burden of proof, beyond a reasonable doubt,
22 is the burden of proof or standard used in a criminal case;
23 and it has no application in a civil case such as this.

24 The Plaintiff, Core Wireless, has the burden of
25 proving patent infringement and damages by a preponderance of

1 the evidence.

2 The Defendant, Apple, has the burden of proving
3 breach of contract by a preponderance of the evidence.

4 A preponderance of the evidence means evidence that
5 persuades you that a claim is more probably true than not.
6 More probably true than not true. Sometimes this is talked
7 about as being the greater weight and degree of credible
8 testimony.

9 Apple, the Defendant in this case, has the burden
10 of proving invalidity by clear and convincing evidence.

11 And Core Wireless, the Plaintiff, has the burden of
12 proving willfulness by clear and convincing evidence.

13 Clear and convincing evidence means evidence that
14 produces in your mind an abiding conviction that the truth of
15 the parties' factual contentions are highly probable.

16 Although proof to an absolute certainty is not
17 required, the clear and convincing evidence standard requires
18 a greater degree of persuasion than is necessary for the
19 preponderance of the evidence standard.

20 If proof establishes in your mind an abiding
21 conviction in the truth of the matter, then the clear and
22 convincing evidence standard has been met.

23 In determining whether any fact has been proved by
24 a preponderance of the evidence or by clear and convincing
25 evidence, you may, unless otherwise instructed, consider the

1 stipulations of the parties, the testimony of all the
2 witnesses, regardless of who called them, and all the
3 exhibits received into evidence, regardless of who may have
4 produced them.

5 As I did at the start of the case, I will give you
6 a summary of each side's contentions. I'll then provide you
7 with detailed instructions on what each side must prove to
8 prevail on each of its contentions.

9 As I previously advised you, this case concerns
10 United States patents: Patent No. 6,266,321, referred to as
11 the '321 or the '321 patent; Patent No. 6,978,143, referred
12 to as the '143 or the '143 patent; Patent No. 7,383,022,
13 referred to as the '022 or the '022 patent; Patent No.
14 7,599,664, referred to as the '664 patent or the '664 patent;
15 and Patent No. 7,804, 5 -- excuse me -- 7,804,850, referred
16 to as the '850 or '850 patent. I will collectively refer to
17 these five patents as the patents-in-suit.

18 The Plaintiff, Core Wireless, seeks money damages
19 from the Defendant, Apple, for allegedly infringing the
20 patents-in-suit by making, using, selling, or offering for
21 sale certain iPhones and iPads.

22 Core Wireless contends that Apple made, used,
23 offered to sell, or sold within the United States or imported
24 into the United States products and/or a system that are
25 operable on the GSM and/or the UMTS networks that infringe at

1 least one of the following claims: Claims 7, 9, and 10 of
2 the '022 patent; Claims 14, 16, and 17 of the '664 patent;
3 Claims 17 and 21 of the '143 patent; Claim 14 of the '321
4 patent; and Claims 1, 10, 21, and 27 of the '850 patent.

5 The claims listed in this paragraph are sometimes
6 referred to as the asserted claims.

7 Core Wireless has accused the following Apple
8 products of infringing the '850 patent: The iPhone 5, iPhone
9 5S, iPhone 5C, iPad 3, iPad 4 with retina display, iPad Mini,
10 iPad Air, and iPad Mini with retina display.

11 Core Wireless has also accused the following Apple
12 products of infringing the remaining patents-in-suit: The
13 iPhone 3G, iPhone 3GS, iPhone 4, iPhone 4S, iPhone 5, iPhone
14 5S, iPhone 5C, iPad, iPad 2, iPad 3, iPad 4.

15 Collectively, these products are referred to as the
16 Apple accused products.

17 Apple denies that it has infringed any asserted
18 claim of the asserted patents. Apple contends that during
19 the term of these patents, Apple did not make, use, sell,
20 offer for sale, or import products and/or a system that
21 infringed any of the asserted claims of Core Wireless's
22 patents.

23 Core Wireless also contends that Apple has
24 actively -- or Apple is actively inducing their customers
25 and/or end users to directly infringe certain claims of the

1 patents-in-suit. Core Wireless is seeking damages for the
2 alleged infringement by Apple.

3 Separately, Apple also contends that the asserted
4 claims of Core Wireless's patents are invalid. Apple
5 contends that the asserted claims of the '143 and the '321
6 patents are anticipated and rendered obvious by prior art
7 that existed before Core Wireless's -- Core Wireless's
8 alleged invention; and, therefore, the '143 and '321 patents
9 are invalid.

10 Apple contends the remaining patents are
11 anticipated by prior art that existed before Core Wireless's
12 alleged invention, and, therefore, Core Wireless's asserted
13 patent claims are invalid.

14 Invalidity is a defense to infringement.
15 Invalidity and infringement are separate and distinct issues
16 that must be separately decided by you, the jury.

17 Your job is to ask whether the asserted claims of
18 the asserted patents have been infringed and whether any of
19 the asserted claims of those patents are invalid.

20 If you decide that any claim of a patent has been
21 infringed and that claim is not invalid, you will then need
22 to decide any money damages to be awarded to Core Wireless as
23 compensation for that infringement.

24 Before you can decide many of the issues in the
25 case, you'll need to understand the role of the patent

1 claims. Patent claims are the numbered sentences at the end
2 of the patent. Claims are important because it's the words
3 of the claim that define what a patent covers.

4 The figures and the text in the rest of the patent
5 provide a description and/or examples of the invention and
6 provide a context for the claims, but it is the claims that
7 define the breadth of the patent's coverage.

8 Each claim is effectively treated as if it were a
9 separate patent, and each claim may cover more or less than
10 any other claim. Therefore, what a patent covers
11 collectively depends on what each of its claims cover.

12 Claims may describe apparatuses, devices, or
13 products such as machines. Such claims are called apparatus
14 claims.

15 Claims may also described processes or methods for
16 making or using a product. Those claims are called method
17 claims.

18 In this case, Core Wireless has asserted both
19 apparatus claims and method claims.

20 Each patent claim sets forth in words a set of
21 requirements in a single sentence. The requirements of a
22 claim are usually divided into parts called limitations or
23 elements.

24 If a device satisfies each of the requirements in
25 the claim's sentence, then it is said that the device is

1 covered by the claim or falls under the claim or infringes
2 the claim.

3 For example, a product claim that covers the
4 invention of a table, may recite the tabletop, four legs, and
5 the glue that secures the legs to the tabletop. In this
6 example, the tabletop, legs, and glue are each a separate
7 limitation or element of the claim.

8 If a device is missing or does not practice even
9 one limitation or element of a claim, it does not meet all of
10 the requirements of a claim and is not covered by the claim.

11 If a device is not covered by the claim, it does
12 not infringe the claim.

13 You first need to understand each claim in order to
14 decide whether or not there is infringement of the claim and
15 decide -- and to decide whether or not the claim is invalid.

16 The first step is to understand the meaning of the
17 words used in the patent claim.

18 The law says that it is my role, as the Judge, to
19 define the terms of the claims, and it's your role, as the
20 jury, to apply my definitions to the issues that you're asked
21 to decide in this case.

22 Therefore, as I explained to you at the beginning
23 of the case, I have determined the meanings of certain claim
24 terms, and I have provided my definitions to you of those
25 certain claim terms, and those definitions are in your juror

1 notebooks.

2 You must accept my definitions of these words in
3 the claims as being correct. It's your job to then take
4 these definitions that I have supplied and apply them to the
5 issues that you are asked to decide, including both the
6 issues of infringement and invalidity.

7 For claims that I have not construed or defined,
8 you are to use the plain and ordinary meaning of the terms as
9 understood by one of ordinary skill in the art, which is to
10 say in the field of technology of the patent at the time of
11 the invention.

12 This case involves two types of patent claims:
13 Independent claims and dependent claims.

14 An independent claim does not refer to any other
15 claim of the patent. An independent claim sets forth all the
16 requirements that must be met in order to be covered by that
17 claim. It's not necessary to look at any other claim to
18 determine what an independent claim covers.

19 In this case, Claim 14 of the '321 patent, Claim 17
20 of the '143 patent, Claim 7 of the '022 patent, and Claims 14
21 and 27 of the '664 patent and Claims 1 and 21 of the '850
22 patent are independent claims.

23 The rest of the claims being -- being asserted in
24 this case are dependent claims. A dependent claim does not
25 itself recite all of the requirements of the claim but refers

1 to another claim for some of its requirements. In this way,
2 the claim depends on another claim.

3 The law considers a dependent claim to incorporate
4 all of the elements -- all of the requirements of the claims
5 to which it refers. The dependent claim then adds its own
6 additional requirements.

7 To determine what a dependent claim covers, it's
8 necessary to look at both the dependent claim and any other
9 claims to which it refers. A product that meets all of the
10 requirements of both the dependent claim and the claims to
11 which it refers, is covered by that dependent claim.

12 The beginning portion, or preamble, of a number of
13 Core Wireless's asserted claims, use the word "comprising."

14 The word "comprising," when used in the preamble,
15 means, including but not limited to, or containing but not
16 limited to.

17 When comprising is used in the preamble, if you
18 decide that an accused product includes all of the
19 requirements of that claim, the claim is infringed. This is
20 true even if the accused instrumentality contains additional
21 elements or performs additional steps.

22 For example, a claim to a table comprising a
23 tabletop, legs, and glue would be infringed by a table that
24 includes a tabletop, legs, and glue, even if the table also
25 includes wheels on the ends of the table's legs.

1 A patent owner has the right to stop others from
2 using the invention covered by its patent claims in the
3 United States for the life of the patent.

4 If a person makes, uses, sells, or offers to sell
5 within the United States or imports into the United States
6 what is covered by a patent claim without the patent owner's
7 permission, that person is said to infringe the patent.

8 In reaching your decision on infringement, keep in
9 mind that only the claims of a patent can be infringed. You
10 must compare the asserted patent claims, as I have defined
11 each of them, to the accused products and determine what --
12 and determine whether or not there is infringement.

13 You should not compare the accused products with
14 any specific example set out in the patent or with the prior
15 art. The only correct comparison is between the language of
16 the claim itself and the accused products just as I've
17 explained it to you.

18 You must reach your decision as to each assertion
19 of infringement based on my instructions about the meaning
20 and scope of the claims, the legal requirements for
21 infringement, and the evidence presented to you by both of
22 the parties.

23 Also, the issue of infringement is assessed on a
24 claim-by-claim basis. Therefore, there may be infringement
25 as to one claim but no infringement as to another claim in

1 the patent.

2 In this case, there are two possible ways that a
3 claim may be infringed. I'll explain the requirements of
4 each of these types of -- of these types of infringement to
5 you.

6 The two types of infringement are called direct
7 infringement and indirect infringement.

8 In order to prove direct infringement of a patent
9 claim, Core Wireless, the Plaintiff, must show by a
10 preponderance of the evidence that the accused product or
11 method includes each and every requirement of that claim.

12 In determining whether an accused product or method
13 directly infringes a patent claim in this case, you must
14 compare the accused product with each and every one of the
15 requirements of that claim to determine whether the accused
16 product contains each and every requirement recited in the
17 claim.

18 A claim requirement is present if it exists
19 in an -- in an accused product just as it is described in the
20 claim language, either as I have explained the language to
21 you; or if I did not explain it, as it would be understood by
22 one of ordinary skill in the art.

23 If an accused product omits any element recited in
24 a claim, then you must find that that particular product does
25 not literally infringe that claim.

1 A patent can be directly infringed even if the
2 alleged infringer did not have knowledge of the patent and
3 without the infringer knowing that what it was doing was
4 infringement of the claim.

5 A patent may also be directly infringed even though
6 the accused infringer believes in good faith that what it is
7 doing is not infringement of the patent. Infringement does
8 not require proof that a party copied the asserted patent
9 claims.

10 The elements used in Claim 17 of the '143 patent
11 are interpreted by the Court and are listed in Table 1 -- in
12 Tab 1 of your juror notebooks. These elements are a special
13 form called a means-plus-function format. These elements
14 require a special interpretation.

15 These words do not cover all means that perform the
16 recited functions but cover only the described structures in
17 the patent specification and drawings that perform the
18 functions or an equivalent of those structures.

19 The table in Tab 1 of your juror notebooks lists
20 the recited functions and structures in this patent -- in the
21 patent specification that performs those functions as
22 interpreted by the Court.

23 You must use my interpretation of the
24 means-plus-function elements in your deliberations regarding
25 infringement and validity, as further discussed below.

1 The Court has instructed you that Claim 17 of the
2 '143 patent contains means-plus-function elements. To show
3 infringement, Core Wireless must prove that it is more likely
4 than not that the structures in the Apple accused products
5 that perform the functions listed in the table in Tab 1 are
6 identical to or equivalent to the structures described in the
7 specification for performing the identical function.

8 In deciding whether Core Wireless has proven that
9 Apple's accused products include structures covered by a
10 means-plus-function requirement, you must first decide
11 whether the Apple accused products have any structures that
12 perform the functions listed in the table at Tab 1 of your
13 juror notebooks.

14 If not, the claim containing that
15 means-plus-function requirement is not infringed.

16 If you find that the Apple accused products perform
17 the -- perform the claimed functions, you must next identify
18 the structures in the Apple accused products that perform
19 these functions.

20 After identifying those structures, you must then
21 determine whether Core Wireless has shown that those
22 structures are either identical to or equivalent to
23 structures of the means-plus-function limitations which the
24 Court determined as part of the claim construction and are
25 listed in the table in Tab 1 of your juror notebooks.

1 If the structures in the Apple accused products are
2 the same or equivalent to the structures I identified, the
3 Apple accused products meet the requirements of that
4 limitation.

5 Whether the structures of the Apple accused
6 products are equivalent to structures described in the patent
7 specification, is decided from the perspective of a person of
8 ordinary skill in the art.

9 If a person of ordinary skill in the art would
10 consider the differences between the structures found in the
11 Apple accused products and the structures described in the
12 patent specification to be insubstantial, the structures are
13 equivalent.

14 Core Wireless alleges that all of the claims of the
15 '022, '664, '143, and '850 patents reside -- recite,
16 rather -- recite the capability to perform a function.

17 To infringe a claim that recites the capability to
18 perform a function, an apparatus needs only to have the
19 recited capability to perform that function.

20 Actually showing the performance of the function is
21 unnecessary, and evidence that the apparatus is reasonably
22 capable of satisfying the claim limitation is sufficient to
23 find the limitation is met, even though it may be capable of
24 non-infringing modes of operation.

25 Language -- language claiming capability includes

1 adapted to, configured to, and means for.

2 A plaintiff may show direct infringement by
3 comparing the claims of the accused products and showing that
4 each and every element of the claims is present therein.

5 Alternatively, a plaintiff may prove direct
6 infringement through standard compliance only where a patent
7 is shown to cover every possible implementation of that
8 standard.

9 Direct infringement requires that a party perform
10 every step of a claimed method.

11 Where no single party does so but multiple parties
12 com -- combine to do so, the claim is directly infringed if
13 Apple has control over all the multiple parties such that all
14 the infringing acts are attributable solely to Apple.

15 Mere arm's length cooperation between parties is
16 insufficient to prove direct infringement. Rather, the
17 accused infringer must control or direct the actions of third
18 parties if those actions are to be attributed to the accused
19 infringer.

20 Where Apple does not itself perform every step of
21 the claimed method, Core Wireless must prove by a
22 preponderance of the evidence, (1), that all the steps of the
23 claimed method were performed in the United States, and, (2),
24 that Apple controls or directs third parties to perform the
25 steps not performed by Apple.

1 Core Wireless has raised two issues under the
2 Doctrine of Equivalents for the '321 patent.

3 First, it contends that scrambling is equivalent to
4 spreading.

5 Second, it contends that changing the power level
6 after spreading, is equivalent to changing the power level
7 before spreading.

8 I'll now instruct you on the Doctrine of
9 Equivalents to use in assessing these two issues. For your
10 deliberations on all other infringement issues, you should
11 consider only literal infringement.

12 If you decide that an accused product or method
13 does not literally infringe an accused patent claim, you must
14 then decide whether it is more probable than not that such
15 product or method infringes the asserted claim under what is
16 called the Doctrine of Equivalents.

17 Under the Doctrine of Equivalents, the product or
18 method can infringe the asserted patent claim if it includes
19 parts or steps that are equivalent to those requirements of
20 the claim that are not literally present in the product or
21 method.

22 If the product or method is missing an equivalent
23 part or step to even one part or step of the asserted patent
24 claim, the product or method cannot infringe the claim under
25 the Doctrine of Equivalents.

1 Thus, in making your decision under the Doctrine of
2 Equivalents, you must look at each individual requirement of
3 the asserted patent claim and decide whether the product or
4 method has an equivalent part or step to that individual
5 claim requirement that are not literally present in the
6 product or method.

7 A part or step of a product or method is equivalent
8 to a requirement of an asserted claim if a person of ordinary
9 skill in the field would think that the differences between
10 the part or step and the requirement were not substantial as
11 of the time of the alleged infringement.

12 One way to decide whether any difference between a
13 requirement of an asserted claim and a part or step of the
14 product or method is not substantial, is to consider whether,
15 as of the time of the alleged infringement, the part or step
16 of the product or method performed substantially the same
17 function in substantially the same way to achieve
18 substantially the same result as the requirement in the
19 patent claim.

20 In deciding whether any difference between a claim
21 requirement and the product or method is not substantial, you
22 may consider whether at the time of the alleged infringement
23 persons of ordinary skill in the field would have known of
24 the interchangeability of the part or step with the claimed
25 requirement.

1 The known interchangeability between the claim
2 requirement and the part or step of the product or method is
3 not necessary to find infringement under the Doctrine of
4 Equivalents.

5 Further, the same element or method step of the
6 accused product or method may be -- may satisfy more than one
7 element of a claim.

8 In addition to alleging direct infringement of the
9 asserted patent claims, the Plaintiff, Core Wireless, alleges
10 that the Defendant, Apple, induces infringement of its
11 asserted patent claims.

12 The act of encouraging or inducing others to
13 infringe a patent is called inducing infringement.

14 Core Wireless alleges that Apple is liable for
15 infringement by actively inducing another party or parties to
16 directly infringe its patents.

17 As with direct infringement, you must determine
18 whether there has been active inducement on a claim-by-claim
19 basis.

20 Apple is liable for active inducement of a claim if
21 Core Wireless proves by a preponderance of the evidence that:

22 (1) the acts are actually carried out by Apple's
23 customers using the accused products and directly infringe
24 that claim.

25 (2) Apple took action during the time the patent

1 was in force, intending to cause the infringing acts by
2 Apple's customers using the accused products.

3 And (3) Apple was aware of or willfully blind to
4 the patent and knew that the acts, if taken, would constitute
5 infringement of the patent or that Apple was willfully blind
6 to that infringement.

7 To prove willful blindness, Core Wireless must
8 prove by a preponderance of the evidence that there was a
9 high probability that a fact exists and that Apple took
10 deliberate acts to avoid learning of that fact.

11 In order to establish active inducement of
12 infringement, it's not sufficient that the other party or
13 parties themselves directly infringe the claim, nor is it
14 sufficient that Apple was aware of the acts by its customers
15 using the accused products that allegedly constitute the
16 direct infringement.

17 Rather, you must find that Apple specifically
18 intended its customers, using the accused products, to
19 infringe -- to infringe the patent or that Apple believed
20 there was a high probability that its customers would
21 infringe the patent but deliberately avoided learning the
22 infringing nature of its customers' acts.

23 In this case, Ladies and Gentlemen, Core Wireless
24 contends that Apple has willfully infringed its patents. If
25 you've decided that Apple has infringed, you must address the

1 additional issue of whether or not that infringement was
2 willful.

3 Willfulness requires you to determine by clear and
4 convincing evidence that Apple acted recklessly.

5 To prove that Apple acted recklessly, Core Wireless
6 must prove by clear and convincing evidence that Apple
7 actually knew or it was so obvious that Apple should have
8 known that its actions constituted an unjustifiably high risk
9 of infringement of a valid patent.

10 To determine whether Apple had this state of mind,
11 consider all facts which may include but are not limited to:

12 (1) whether or not Apple acted in accordance with
13 the standards of commerce for its industry.

14 (2) whether or not there is a reasonable basis for
15 Apple to have believed that it did not infringe or had a
16 reasonable defense to infringement.

17 And (3) whether or not Apple tried to cover up its
18 infringement.

19 None of these factors alone is determinative, and
20 this list of factors is not an exhaustive list of things that
21 you should consider.

22 Your determination of willfulness should
23 incorporate the totality of the circumstances based on the
24 evidence presented during the trial.

25 Core Wireless has the burden of proving willfulness

1 by clear and convincing evidence.

2 I'll now instruct you on the rules that you must
3 follow in deciding whether or not Apple has proven the
4 asserted claims of the patents-in-suit are invalid.

5 An issued patent is accorded a presumption of
6 validity based on the presumption that the United States
7 Patent and Trademark Office, which you've often heard
8 referred to during this trial simply as the PTO, acted
9 correctly in issuing the patent.

10 This presumption of validity extends to all issued
11 patents, including those that claim the benefit of an earlier
12 filed patent application, such as so-called continuations or
13 continuations-in-part.

14 To prove that any claim of a patent is invalid,
15 Apple must persuade you by clear and convincing evidence that
16 the claim is invalid.

17 Like infringement, validity is determined on a
18 claim-by-claim basis. You must determine separately for each
19 claim whether that claim is invalid.

20 If one claim of a patent is invalid, this does not
21 mean that any other claim is necessarily invalid. Claims are
22 construed in the same way for determining infringement as for
23 determining invalidity.

24 Apple has challenged the validity of the asserted
25 claims on a number of grounds. In making your determination

1 as to invalidity, you should consider each claim separately.

2 Apple contends that all asserted claims of the
3 patents-in-suit are invalid for being anticipated by prior
4 art. Apple bears the burden of establishing anticipation by
5 clear and convincing evidence.

6 A patent claim is invalid if the claimed invention
7 is not new. For a claim to be invalid because it is not new,
8 all of its requirements must have existed in a single device
9 that predates the claimed inventions or must have been
10 described in a single previous publication or patent that
11 predates the claimed invention.

12 In patent law, a previous device, publication, or
13 patent that predated the claimed invention is called a prior
14 art reference.

15 If a patent claim is not new, we say that it is
16 anticipated by the prior art or by a prior art reference.

17 Anticipation requires that a single reference not
18 only disclose all elements of the claim within the four
19 corners of the document, but it must also disclose those
20 elements arranged or combined as -- in the same way as in the
21 claim.

22 Apple must prove with clear and convincing evidence
23 that an asserted patent claim was anticipated by the prior
24 art reference.

25 In determining whether or not the invention is

1 valid, you must determine the scope and content of the prior
2 art at the time the invention was made.

3 For prior art to anticipate a claim of a patent,
4 the disclosure in the prior art reference does not have to be
5 in the same words as in the claim; but all the elements of
6 the claim must be there, either stated or necessarily
7 implied, so that someone of ordinary skill in the field of
8 the invention, looking at the one prior art reference, would
9 be able to make and use at least one embodiment of the
10 claimed invention.

11 Anticipation can occur when the claimed invention
12 inherently and necessarily results from practice of what is
13 disclosed in the written reference, even if the inherent
14 disclosure was unrecognized or unappreciated -- unappreciated
15 by one of ordinary skill in the field of the invention.

16 If you find that a patent claim is not new, that it
17 is anticipated as explained above, you should find that claim
18 invalid.

19 Apple also contends that the asserted claims of the
20 '143 patent and the '321 patent are invalid as obvious.

21 Even though an invention may not have been
22 identically disclosed or described in a single prior art
23 reference before it was made by an inventor, the invention
24 may have been obvious to a person of ordinary skill in the
25 field of the technology of the patent at the time the

1 invention was made.

2 Apple bears the burden of establishing obviousness
3 by clear and convincing evidence.

4 In determining whether a claimed invention is
5 obvious, you, the jury, must consider the level of ordinary
6 skill in the field of the technology of the patent that
7 someone would have had at the time the claimed invention was
8 made, the scope and content of the prior art, any differences
9 between the prior art and the claimed invention, as well as
10 the ordinary knowledge of the person of ordinary skill at the
11 time of the invention.

12 The skill of the actual inventor is irrelevant
13 because inventors may possess something that distinguishes
14 them from workers of ordinary skill in the art.

15 Keep in mind that the existence of each and every
16 element of the claimed invention in the prior art does not
17 necessarily prove obviousness. Most, if not all, inventions
18 rely on building blocks of prior art.

19 In considering whether a claimed invention is
20 obvious, you should consider whether, as of the priority date
21 of the patents-in-suit, there was a reason that would have
22 prompted a person of ordinary skill in the field to combine
23 the known elements in a way that the claimed invention does,
24 taking into account such facts as:

25 (1) whether the claimed invention was merely the

1 predictable result of using prior art elements according to
2 their known function;

3 (2) whether the claimed invention provides an
4 obvious solution to a known problem in the relevant field:

5 (3) whether the prior art teaches or suggests the
6 desirability of combining elements in the claimed inventions;

7 (4) whether the prior art teaches away from
8 combining elements in the claimed invention;

9 (5) whether it would have been obvious to try the
10 combination of elements, such as when there is a design need
11 or market pressure to solve a problem, and there are a finite
12 number of identified predictable solutions;

13 And, (6) whether the change resulted more from the
14 design incentives or other market forces.

15 In determining whether the claimed invention was
16 obvious, consider each claim separately. Consider only what
17 was known at the time of the invention.

18 In making these assessments, Ladies and Gentlemen,
19 you should take into account any objective evidence --
20 objective evidence, sometimes called secondary
21 considerations, that may have existed at the time of the
22 invention and afterwards that may shed light on
23 non-obviousness, such as:

24 (1) whether the invention was commercially
25 successful as a result of the merits of the claimed

1 inventions, rather than the -- the result of design needs or
2 market pressure, advertising, or similar activities;

3 (2) whether the invention satisfied a long-felt
4 need;

5 (3) whether others had tried and failed to make the
6 invention;

7 (4) whether others copied the invention
8 understanding that there is no contention in this case that
9 Apple copied the patented technology;

10 (5) whether there were changes or related
11 technologies or market needs contemporaneous with the
12 invention;

13 (6) whether the invention achieved unexpected
14 results;

15 (7) whether others in the field praised the
16 invention;

17 (8) whether persons having ordinary skill in the
18 art of the invention expressed surprise or disbelief
19 regarding the invention;

20 (9) whether others sought or obtained rights to the
21 patent from the patentholder;

22 And (10) whether the inventor proceeded contrary to
23 accepted wisdom in the field.

24 In support of obviousness, you may also consider
25 whether others independently invented the claimed invention

1 before or about the same time as the named inventor thought
2 of it.

3 If you find that Apple has proved obviousness by
4 clear and convincing evidence, then you must find that claim
5 is invalid.

6 Several times in my instructions to you I have
7 referred to a person of ordinary skill in the field of the
8 invention. It is up to you to decide the level of ordinary
9 skill in the field of the invention.

10 You should consider all the evidence introduced at
11 trial in making this decision including:

12 (1) the level of education and experience of
13 persons working in the field;

14 (2) the types of problems encountered in the field;

15 And (3) the sophistication of the technology.

16 A person of ordinary skill in the art is presumed
17 to have known of the relevant prior art at the time of the
18 claimed invention.

19 If you find that Apple has infringed any valid
20 claim of Core Wireless's patents-in-suit, then you must
21 consider what amount of damages to award to Core Wireless.

22 I'll now instruct you about the measure of damages.

23 By instructing you on damages, I'm not suggesting
24 which party should win this case on any issue.

25 The damages you award must be adequate to

1 compensate Core Wireless for any infringement you may find.

2 However, you must not award Core Wireless more
3 damages than are adequate to compensate for the infringement,
4 nor should you include any additional amount for the purpose
5 of punishing Apple or setting an example.

6 Core Wireless has the burden to establish the
7 amount of its damages by a preponderance of the evidence.

8 The patent owner is not entitled to damages that
9 are remote or speculative.

10 Core Wireless seeks damages in the form of a
11 reasonable royalty. A reasonable royalty is defined as the
12 money amount Core Wireless and Apple would have agreed upon
13 as a fee for Apple's use of Core Wireless's invention at the
14 time the infringement began.

15 The determination of a damage award is not an exact
16 science, and the amount need not be proven with unerring
17 precision. You may approximate, if necessary, the amount to
18 which the patent owner is entitled.

19 In such case, while damages may not be determined
20 by mere speculation or guess, it is proper to award a damages
21 amount if the evidence shows the extent of the damages as a
22 matter of just and reasonable inference.

23 I'll give you more detailed instructions regarding
24 damages in just a minute. Note, however, that under the
25 patent laws, Core Wireless is entitled to recover no less

1 than a reasonable royalty for each infringing sale or use of
2 its inventions.

3 A royalty is a payment to a patentholder in
4 exchange for the right to make, use, sell, or import the
5 claimed invention.

6 A reasonable royalty is the amount of money to be
7 paid for a license to make, use, or sell the invention that a
8 willing patent owner and a willing prospective licensee would
9 have agreed to immediately before the infringement began as a
10 part of a hypothetical negotiation.

11 In considering this hypothetical negotiation, you
12 should focus on what the expectations of the patentholder and
13 the infringer would have been had they entered -- had they
14 entered into an agreement at that time and they acted
15 reasonably in their negotiations.

16 In determining this, you must assume that both
17 parties believed the patent was valid and infringed, and the
18 patentholder and infringer were willing to enter into an
19 agreement.

20 The reasonable royalty you determine must be a
21 royalty that would have resulted from this hypothetical
22 negotiation and not simply a royalty that either party would
23 have preferred.

24 Evidence of things that happened after the
25 infringement first began may be considered in evaluating the

1 reasonable royalty only to the extent that the evidence --
2 evidence aids in assessing what royalty would have resulted
3 from a hypothetical negotiation.

4 Where the parties dispute a matter concerning
5 damages for infringement, it is Core Wireless's burden to
6 prove that it is more probable than not that Core Wireless's
7 version is correct. Core Wireless must prove the amount of
8 damages with reasonable certainty, but need not prove the
9 amount of damages with mathematical precision. However, Core
10 Wireless is not entitled to damages that are remote or
11 speculative.

12 If you find that any of the patents-in-suit are
13 both infringed and not invalid, you must award damages to
14 compensate for any such infringement.
15 The amount of damages Core Wireless can recover regarding the
16 infringement of the '850, the '022, the '664, and the '143
17 patents is limited to those acts of infringement that
18 occurred after Apple received notice that it infringed those
19 patents.

20 Actual notice means that the patent owner
21 communicated to Apple a specific charge of infringement of
22 those patents by a specific accused product or device.

23 In determining when damages begin with regard to
24 method claims of patents, such as the '321 patent, the law
25 does not have a notice requirement. Therefore, the

1 calculation of damages for method claims of the '321 patent
2 should begin as of the later of the date the patent was
3 issued or when the infringement began.

4 A reasonable royalty must reflect that Core
5 Wireless declared the asserted patents to be essential to the
6 cellular standards of the European Telecommunications
7 Standards Institute, sometimes called ETSI.

8 Further, Core Wireless committed to license the
9 patents on fair, reasonable, and non-discriminatory, or FRAND
10 terms.

11 By referring to standard essential patents, the
12 Court is not instructing you that the asserted patents are
13 actually essential to any standard.

14 Again, it is up to you, the jury, to decide whether
15 or not Core Wireless has proven the patents are standard
16 essential and infringed.

17 Core Wireless submitted a written commitment to
18 ETSI covering each of the patents-in-suit in which it agreed
19 to be prepared to grant irrevocable licenses on fair,
20 reasonable, and non-discriminatory terms and conditions.

21 You must make sure that any reasonable royalty
22 determination takes into account Core Wireless's FRAND
23 obligations, as the Court has just read them to you.

24 In determining what amount is a FRAND royalty, you
25 may consider any evidence of patent hold-up and royalty

1 stacking. A reasonable royalty in this case cannot exceed
2 the amounts permitted under Core Wireless's FRAND
3 obligations.

4 I'll provide you with additional instructions on
5 how the FRAND commitment for the asserted patent affects your
6 determination of a reasonable royalty.

7 In determining a reasonable royalty, you should
8 consider all the facts known and available to the parties at
9 the time the infringement began. Some of the kinds of
10 factors that you should consider in making your determination
11 are:

12 (1) the royalties received by the patentee for
13 licensing of the patents-in-suit proving or tending to prove
14 an established royalty.

15 (2) the rates paid by a licensee for the use of
16 other patents comparable to the patents-in-suit.

17 (3) the nature and scope of the license as
18 exclusive or non-exclusive or as restricted or non-restricted
19 in terms of territory or with respect to the parties to whom
20 the manufactured products may be sold.

21 (4) the effect of selling the patented specialty in
22 promoting sales of other products of the licensee, the
23 existing value of the invention to the licensor as a
24 generator of sales of his non-patented items, and the extent
25 of such derivative or convoyed sales.

1 (5) the duration of the patent and the term of the
2 license.

3 (6) the extent to which the infringer has made use
4 of the invention and any evidence probative of the value of
5 that use.

6 (7) the portion of the profit or of the selling
7 price that may be customary in the particular business or in
8 comparable businesses to allow for the use of the invention
9 or analogous inventions.

10 (8) the portion of the realizable profits that
11 should be credited to the invention as distinguished from
12 non-patented elements, the manufacturing process, business
13 risks, or significant features or improvements added by the
14 infringer.

15 (9) the opinion and testimony of qualified experts.

16 And (10) the amount that a licensor, such as the
17 patentee, and a licensee, such as the infringer, would have
18 agreed upon at the time the infringement began, if both sides
19 had been reasonably and voluntarily trying to reach an
20 agreement -- that is, the amount which a prudent licensee who
21 desired as a business proposition to obtain a license to
22 manufacture and sell a particular article embodying the
23 patented invention would have been willing to pay as a
24 royalty and yet be able to make a reasonable -- reasonable
25 profit and which amount would have been acceptable to a

1 prudent patentee who was willing to grant a license.

2 No one factor is dispositive.

3 Ladies and Gentlemen, you can and should consider
4 the evidence that's presented to you in this case on each of
5 these factors.

6 You may also consider any other factors which in
7 your minds would have increased or decreased the royalty the
8 infringer would have been willing to pay and the patent owner
9 would have been willing to accept, acting as normally prudent
10 business people.

11 When dealing with standard essential patents, there
12 are two special apportionment issues that arise.

13 First, the patented feature must be apportioned
14 from all of the unpatented features reflected in the
15 standard.

16 Second, the patentee's royalty must be premised on
17 the value of the patented feature, not any value added by the
18 standard's adoption of the patented technology.

19 These steps are necessary to ensure that the
20 royalty award is based on the incremental value that the
21 patented invention adds to the product, not any value added
22 by the standardization of that technology.

23 This is particularly true for standard essential
24 patents. When a technology is incorporated into a standard,
25 it is typically chosen from among different options. Once

1 incorporated and widely adopted, that technology is not
2 always used because it is the best or the only option; it is
3 used because its use is necessary to comply with the
4 standard.

5 In other words, widespread adoption of a standard
6 essential technology is not entirely indicative of the added
7 usefulness of the innovation over the prior art.

8 To ensure that a FRAND royalty rate reflects the
9 incremental value of the patented technology, you must
10 consider the following two factors in setting a FRAND royalty
11 rate:

12 (1) any royalty for the patented technology must be
13 apportioned from the value of the standard as a whole;

14 And (2) the FRAND royalty rate must be based on the
15 value of the invention, not any value added by the
16 standardization of that invention.

17 In the case of multicomponent products like
18 smartphones and tablet computers where demand for the entire
19 product is not attributable to the patented feature, you may
20 not base the royalty on the price or revenue of the entire
21 product; but instead must use a more realistic starting point
22 for the royalty calculation, often the smallest salable unit,
23 and at times, even less.

24 One way to calculate a royalty is to determine a
25 one-time lump-sum payment that the infringer would have paid

1 at the time of the hypothetical negotiation for a license
2 covering all sales of the licensed -- licensed product, both
3 past and future.

4 This differs from payment of an ongoing royalty
5 where a royalty rate is applied against future sales as they
6 occur.

7 When a one-time lump-sum is paid, the infringer
8 pays a single price for a license covering both past and
9 estimated future infringing sales. It is up to you, based on
10 the evidence, to decide what type of royalty, if any, is
11 appropriate in this case.

12 The European Telecommunications Standards
13 Institute, ETSI, is a standard-setting organization made up
14 of member companies. ETSI adopted the cellular
15 communications standards that are at issue in this case.

16 Apple contends that Core Wireless breached its
17 contract with ETSI, as made to ETSI in its licensing
18 declaration, to be prepared to grant irrevocable licenses on
19 fair, reasonable, and non-discriminatory, FRAND, terms.

20 Core Wireless disagrees with Apple's interpretation
21 of Core Wireless's alleged obligations, and disputes that it
22 has breached a FRAND commitment.

23 I'll now instruct you regarding the standards to
24 apply for such breach a contract -- for such
25 breach-of-contract claims.

1 Core Wireless has obligated itself through its
2 contract with ETSI to license its technology on a fair,
3 reasonable, and non-discriminatory, or FRAND, basis to third
4 parties, including Apple.

5 You must now determine whether Core Wireless has
6 breached its obligation.

7 To find a breach of contract, you must conclude
8 that the party bound by the contract did not fulfill its
9 obligations under the contract.

10 If you find that Core Wireless breached its
11 contractual obligations and Apple was harmed as a result, you
12 must award nominal damages. Nominal damages must be greater
13 than zero but may not exceed \$1.

14 Ladies and Gentlemen, with those instructions, we
15 are ready to hear closing arguments from the attorneys in
16 this case.

17 However, I'm going to allow for a strict 10-minute
18 recess for the jury and those present, before we begin the
19 closing arguments of counsel.

20 Do not discuss anything about my instructions. Do
21 not begin your deliberations. Do not discuss anything about
22 the case with each other. And we'll have you back in here in
23 approximately 10 minutes to continue with closing arguments
24 from counsel.

25 The jury is excused for recess at this time.

1 COURT SECURITY OFFICER: All rise for the jury.

2 (Jury out.)

3 THE COURT: All right, Counsel. It's 14 minutes
4 after 1:00. We will reconvene at 24 minutes after 1:00. We
5 stand in recess for the next 10 minutes.

6 (Recess.)

7 (Jury out.)

8 COURT SECURITY OFFICER: All rise.

9 THE COURT: Bring in the jury, please.

10 COURT SECURITY OFFICER: All rise for the jury.

11 (Jury in.)

12 THE COURT: Please be seated.

13 Ladies and Gentlemen, with the instructions that
14 I've just given you, we're now prepared to hear closing
15 arguments from counsel for both the parties.

16 The Plaintiff may present its first closing
17 argument at this time.

18 You may proceed, Mr. Bunsow.

19 MR. BUNSOW: Thank you, Your Honor.

20 Good afternoon, Ladies and Gentlemen. Nice to see
21 you again. I want to thank you on behalf of everybody at
22 this table for your service in this case.

23 Last week was a long week. I'm sure there were
24 times you felt you were drinking from a fire hose.

25 In the next few minutes, I hope that I can bring

1 some clarity to what you heard last week and help you to
2 decide this case.

3 Let me start by what we heard in the beginning of
4 the case. The first issue in this case that we heard about
5 was whether or not the Core Wireless and Nokia patents are in
6 the standard.

7 In fact, here's what Apple's lawyer told you in his
8 opening statement:

9 Now, you might think from Mr. Bunsow's
10 presentation about Nokia's history in the industry and the
11 standards themselves that you're going to see evidence of
12 proposals being made to ETSI that match the patents and that
13 ETSI voted to approve those.

14 Well, you won't see that. There's no evidence
15 of any proposal being made to ETSI that matches these five
16 patents and that was accepted by ETSI.

17 We're going to bring to you the former
18 chairman of the board of ETSI, Dr. Michael Walker, who is
19 actually here today, and he will testify how ETSI works, how
20 the rules work, and how they operate.

21 And then they showed you Dr. Walker's photo, and
22 Dr. Walker was in the gallery.

23 Our first witness was Mr. Antti Toskala.

24 Mr. Toskala was the chairman of the working group
25 in the mid-'90s that established these standard

1 specifications. He was there. He was in the room.

2 And he told you in no uncertain terms that the '321
3 patent is in the ETSI 3GPP standard. He told you that the
4 '143 patent is in the ETSI standard. He told you that the
5 '850 patent is in the ETSI standard.

6 And then we didn't hear from Dr. Walker, did we?
7 Apple's primary defense in this case, the one they touted in
8 their opening statement, disappeared with the first witness
9 in this case.

10 But that's not all. On Thursday, Dr. Stark, their
11 expert witness, admitted that Nokia put the '022 and the '664
12 patents in the GSM standard as well. The evidence stands
13 uncontradicted that all five patents-in-suit are in the
14 standards.

15 And let me just pause for a second and let that
16 sink in, because this is important. For three years, Apple
17 denied that its products practiced the standard.

18 In this courtroom last week, Apple admits that its
19 products complied with the standards, the same standards that
20 those five patents cover. That's why it was so important
21 that those patents not be in the standard, but they are.

22 But we're not just relying on that. We brought you
23 evidence from source code, we brought you evidence from
24 Apple's own testing that they paid over \$5 million for, and
25 we brought you testing from the standards as well.

1 Dr. Trevor Smedley spent 700 hours analyzing the
2 actual source code in the Apple products, and his testimony
3 stands uncontradicted.

4 Dr. Knightly's response to my question about his
5 source code review was: I thought I referred to it in one
6 answer. That's it. That's the sum and substance of Apple's
7 experts trying to contest what Dr. Smedley did. There is no
8 dispute.

9 The CETECOM testing from Apple, reliable,
10 independent testing -- and let me tell you something
11 important about this. You see where those CETECOM tests say
12 "pass"? It has to say that, in order for Apple to sell its
13 products to AT&T and the other network providers.

14 If that said "fail," they wouldn't be able to sell
15 them.

16 And the only reason it says "pass" is because
17 they're using the technology of the patents in this case.
18 These are tests that establish that.

19 We have the burden of proving infringement by a
20 preponderance of the evidence. I like to use a football
21 analogy. If we get the football -- the nose of the football
22 beyond the 50 yard line, we have proven it by a preponderance
23 of the evidence. That is the test in this case.

24 Let's talk about infringement of the '321 patent.

25 You remember that's the one that controls the power

1 amplifier in the device. We brought you detailed testimony
2 from Mr. Chandler based on the source code that's in the
3 products.

4 We also showed you Apple documents, Qualcomm and
5 Intel documents, CETECOM tests, and the standard documents
6 themselves. We have proven infringement of the -- Claim 14
7 of the '321 patent for both the voice mode and what's called
8 the PRACH mode.

9 We showed you the constellation diagram. And even
10 the one that Dr. Stark drew, matches the drawings in the
11 patents.

12 Dr. Stark admitted that the voice mode in these
13 products is being used today, and it's widely being used
14 today. Voice transmission is very important; and when voice
15 is being used, they match the claims of this patent.

16 In addition, Dr. Stark admitted that Apple products
17 comply with the standard covered by the '321 patent. This is
18 not just any standard. This is the standard covered by the
19 '321 patent. They use it. They infringe.

20 So what did they say? They say Apple products do
21 not use two standards. Apple products use one code, not two.
22 Apple products do not change the power level before
23 compiling.

24 Let's look at the evidence. The source code from
25 Dr. Smedley, uncontested, shows two channels.

1 Dr. Stark, when asked whether he had an opinion on
2 whether the products have two channels or not, said, quote:
3 I have no opinion.

4 This is the man that Apple hired to defend them
5 against these serious charges of infringement; and all he can
6 offer to you is: I have no opinion. That's it.

7 Well, let's look at what else he showed us. This
8 is a diagram of the Qualcomm device; and when you're
9 wondering whether it has two codes, you can see them right
10 there. Those are the two codes, the Q and I codes that Mr.
11 Chandler talked about and that I asked Dr. Stark about.

12 And their argument about not changing the power
13 level before compiling, well, Ladies and Gentlemen, this is
14 shown in the patent. It's the preferred embodiment of the
15 patent. There is no way that that is not covered by the
16 claims.

17 Well, we -- we know more, because the '321 patent
18 is in the ETSI standard, the very standard that they all
19 now -- now, three years later, concede that they practice.
20 The '321 patent, Claim 4, is infringed.

21 Let's look at the '850 patent. You remember the
22 '850 patent was controlling the transmissions when there's a
23 slowdown, such as in the evenings. We showed you that
24 analogy. We proved infringement with Mr. Chandler's
25 testimony.

1 Again, the source code analysis, very, very
2 important, because these are the actual Apple products. The
3 CETECOM testing and the 3GPP standards, their response, they
4 claim that there's no virtual transmission time interval;
5 there's no predetermined delay period; there's no checking of
6 the current TTI. They are wrong.

7 Here is the source code that shows exactly that.
8 The space between the two green blocks is the virtual
9 transmission time interval. The blue blocks on the bottom
10 are the predetermined period, when the predetermined period
11 and the transmission takes place.

12 And Apple products do checking in the current
13 transmission time interval. This is from the source code.
14 It is uncontested.

15 And the '850 patent is in the standard, the very
16 standard that they must comply with in order to sell these
17 devices.

18 The '850 patent, Claims 1, 10, 21, and 27, is
19 infringed.

20 Let's look at the '143 patent. This is the patent
21 with -- on the dedicated channel. You remember we talked
22 about that.

23 Again, Dr. Olivier's testimony, the source code
24 analysis, Apple documents, CETECOM testing, 3GPP standards;
25 and in his testimony, Dr. Stark admitted that all of these

1 functions are found in the accused devices, all of them.

2 Apple's defense, they say the decision to change
3 the channel is made in the network on the right side, not the
4 handset side on the left.

5 Remember they had that drawing? They all came over
6 to the screen, and they said the decision is on the right
7 over the network. It's not on the left. Wrong. That is not
8 a position we have ever taken.

9 The claim says: Means for comparing the threshold
10 of the channel selection parameter to a current value of the
11 channel selection parameter for the basis of the channel
12 selection.

13 And that is exactly what happens. The comparing,
14 the comparing is done in the handset on the left side of
15 those drawings that you saw.

16 And Dr. Stark had to admit that in his testimony.
17 There it is. There's the drawing, and it's on the left side.

18 And Dr. Stark said: It's not Core Wireless's
19 position that the channel selection in the '143 is the
20 decision on the right-hand side of that chart?

21 And he said: I guess that's -- that's true.

22 And that is true. This argument about all of the
23 channel selection being done on the right side is a
24 red-herring argument created by Apple in an attempt to avoid
25 infringement in this case. That's all it is.

1 And we know that because the '143 patent is in the
2 standard. The requirements of the '143 patent, in order to
3 meet the standard, leads you directly to infringement in this
4 case.

5 Apple products meet the '143 standard. Dr. Stark
6 admitted that. Is there any dispute that the products
7 support the standards in terms of what's being accused in the
8 '143?

9 Not just any standard, we're talking specifically
10 about these patented standards. And he said, no, there's no
11 dispute.

12 '143, Claims 17 and 21 are infringed.

13 Let's talk about the '022 and '664 patents
14 together. You'll recall that they are the ones that control
15 the channel -- the quality of the channel and transmissions,
16 particularly in urban areas.

17 We brought you Dr. Olivier's testimony, again, the
18 source code analysis, Apple documents, CETECOM testing, 3GPP
19 standards, Qualcomm deposition testimony. And here, Dr.
20 Stark, again, admitted that all the functions are found in
21 the accused products.

22 Their defense, Apple products use an infinite
23 filter, not a finite filter. And the BE period --
24 BEP_period2 is not an indication of signal quality. That's
25 what their defenses are to infringement of this patent.

1 Let's take a look -- in questioning Dr. Stark,
2 Apple showed him the upper part of this page, and that's all
3 they showed him. This is a tactic that we've seen throughout
4 this trial. They did not show the whole story. If they had,
5 they would have shown the parts that we have highlighted
6 here.

7 In other words, this change to the claim is not to
8 imply that the claims are limited only to a running average
9 filter. In other words, these claims are directed to both
10 infinite filters and finite filters.

11 In addition, the last sentence, none of the changes
12 are seen to change the scope of the claims as compared to the
13 previous language.

14 So all this argument about how we added a -- a
15 phrase, a word to the claims and thereby limited them, they
16 didn't show you what was really said in the Patent Office.

17 And there's no difference anyway. Dr. Stark
18 admitted on cross-examination that an infinite filter and a
19 finite filter are fundamentally the same. Diminishing
20 returns. You very quickly reach the point of diminishing
21 returns.

22 What about the BEP_period and whether it's a
23 channel selection component? Take a look. This is from the
24 specification. It says that it is a channel quality
25 measurement. That basis for non-infringement that Apple told

1 you about is contrary to what the standard says.

2 The '664 patent and the '022 patents, all of the
3 asserted claims are also infringed. We confirmed that
4 infringement by source code, by testing, and by the standard
5 itself.

6 What did Apple bring to you? Apple brought to you
7 no evidence. Mr. Schell said that they have world-class
8 laboratories out in Cupertino. They brought you no engineer.
9 They brought you no testing.

10 Dr. Stark has never even spoken to an Apple
11 engineer about the accused products in this case. The
12 closest he's ever been to Apple is when he and his son drove
13 by when his son was visiting colleges out in California.
14 That's it. That's it. Why would they shield their technical
15 people from the engineers that know how these devices
16 operate?

17 Apple presented no significant defenses to its
18 infringement in this case.

19 Let me turn to the question of validity. Validity
20 is Apple's burden because these patents were issued by the
21 United States Patent and Trademark Office, and they are
22 presumed valid. That burden requires an abiding conviction
23 that invalidity is highly probable. They haven't even come
24 close to making that showing here.

25 On the '321 patent, the question is: Does the

1 prior art that they're asserting clearly show two and only
2 two transmission channels? It does not. They're referring
3 to an Odenwalder patent that has more than two channels.

4 When you look at the drawings, it has five channels
5 in one drawing, it has three in another. It doesn't show a
6 two-channel configuration anywhere.

7 Now, they're going to say, well, that's just like
8 the accused products because the accused products have eight
9 channels. And they do.

10 But we're talking about a particular mode of
11 operation. We're talking about voice operation, and we're
12 talking about what's called the PRACH operation.

13 And in those two modes of operation, the devices
14 use two channels and only two channels. And you will never
15 find that suggested or described in this reference. Take a
16 look if you don't believe me.

17 The prior art does not show two and only two
18 channels. Apple has failed to prove the '321 patent invalid.

19 What about the '850 patent? On the '850 patent,
20 they offer the Kayama reference.

21 And I asked Dr. Knightly: So the Kayama patent is
22 directed toward high-volume traffic?

23 And he said: It's trying to prevent overload.

24 That's exactly the opposite of what the '850 patent
25 is for. The '850 patent is for times when there is very

1 little transmission or no transmission. We showed you that.

2 The '850 patent is when things are going slowly, a
3 few people arrive, they get in the bus, they take off.

4 Kayama relates to an overloaded situation,
5 something that the '850 patent is not even addressed to.

6 This reference is not even close to supplying
7 invalidity by clear and convincing evidence. The '850 patent
8 has not been proven invalid. It is a valid patent.

9 Let's look at the '143. First of all, the
10 reference that they cite was considered by the Patent Office,
11 not only the examiner but the Patent Office Board of Appeals,
12 and they found that it did not lead to invalidity. That's a
13 three-panel member of the Board of Appeals.

14 They also want to talk about an ETSI proposal cited
15 by Apple that shows the switch decision on the network side,
16 not in the mobile phone.

17 Well, I told you for infringement, we're relying on
18 the decision made -- being made on the left side in the
19 mobile phone.

20 For invalidity, we're relying on the decision being
21 made in the left side on the mobile phone. Our positions are
22 perfectly consistent here. You're going to hear about
23 stretching the fences. That is not happening.

24 The ETSI references are irrelevant if the decision
25 is being made in the handset, and that's what Dr. Stark told

1 you, and that is the truth.

2 The '143 patent has not been proven invalid by
3 clear and convincing evidence.

4 What about the '022 and the '664? Dr. Stark only
5 said that prior art contains the same filter that the -- as
6 the standard, but here's the key distinction for the '022 and
7 the '664.

8 This parameter that's sent from the network, this
9 BEP_period2, it used to be sent to all mobiles at the same
10 time. The invention of the '022 and '664 is that I get my
11 own BEP_period2 indication of signal quality, and you get
12 one, and you get one, and you get one, and each of us gets a
13 separate one.

14 So my phone benefits from it. Not some generalized
15 approach. That's what the '022 and the '664 patent are
16 about, and they have not shown that in any prior art
17 reference.

18 Those patents have not been proven invalid by clear
19 and convincing evidence. Apple has failed to make its burden
20 of proof in this case that any of the patents are invalid.

21 All of these patents are infringed, all of these
22 patents are valid. They were issued by the Patent Office.
23 They remain valid today.

24 These are important patents. They are incorporated
25 into the standard; and that alone is strong evidence of --

1 that they are not invalid.

2 Patents that are unique enough that their
3 technology is in the standard, is a clear indication that
4 they are not invalid.

5 What about willful infringement? Well, what did
6 Apple do when it learned of these patents back in 2009?
7 Nothing.

8 What did they do when they were told in 2011 that
9 these were patents that they were not getting a license to?
10 Nothing.

11 What did they do after we filed suit and sent them
12 a letter asking for a meeting to discuss their need for a
13 license to these patents? Nothing.

14 In fact, we sent them a letter on May 10th of 2012.
15 They did nothing.

16 We sent them a letter on July 24th. They did
17 nothing.

18 We sent them a letter on November 14th. They did
19 nothing.

20 We sent them a letter on January 30th, 2013. They
21 did nothing.

22 We sent them a letter on February 22nd, 2013. They
23 did nothing.

24 And we gave up. We quit trying. Two years later,
25 we finally got a meeting with them, and they told us they

1 would settle for \$200,000 if we would go away and leave them
2 alone. And that was an insult.

3 We got one letter from them in October of 2012, and
4 this is very interesting, because this is before the Apple
5 executive that wrote this letter had talked to any of the
6 experts in this case.

7 In fact, the experts in this case have never talked
8 to Mr. Teksler, who wrote this letter.

9 Apple said, without the benefit of expert opinion,
10 quote: Apple intends to establish non-infringement and
11 invalidity of the patents.

12 Basically, they were telling us: You jabbed the
13 wrong bear. That's just the way it is. We're going to
14 destroy your patents. We're going to find that they're not
15 infringed. And we're going to spend as much as it takes to
16 get there. And you can tell that this has cost a lot.

17 They had no basis for doing that. You heard some
18 testimony about: Well, look, you know, you can't just read
19 the letters, because the lawyers in the case were talking to
20 each other during these time periods.

21 And that's true. And here's what I, one of the
22 lawyers, was being told by him, one of the lawyers for Apple.

23 Mr. Bunsow reached out a few weeks later, in
24 mid-March, to Apple's local counsel, Eric Albritton, again,
25 indicating Core's interest in meeting; and the response back

1 from Apple was that a discussion would be premature.

2 This is nine months after we filed suit, and it's a
3 month after they sent us a letter saying: We're going to
4 destroy your patents. And yet a discussion is premature.

5 Apple is a willful infringer in this case. Their
6 tactics -- I'll let you decide what adjective to put at the
7 end of that sentence. They're not the kind of business
8 tactics that any of us should be subjected to.

9 Let's talk about damages in this case, because
10 damages are ultimately what this case is all about. Apple
11 knows it infringes. It was going to continue to infringe
12 until somebody stopped them, and we came along and decided to
13 do it.

14 Now that they've been caught, now that they've been
15 caught with their hands in the standards, they want you to
16 let them off. They want you to let them off for \$500,000 for
17 patents that they need in order to sell 129 million products.

18 They want to pay us less than 2 cents apiece.

19 That's not the way it works. Damages, under the
20 United States patent law, require that you award no less than
21 a reasonable royalty for the use made of the invention by the
22 infringer. That's the use made by Apple in over 129 million
23 products.

24 THE COURT: You've now used 25 minutes, Counsel.

25 MR. BUNSOW: Thank you, Your Honor.

1 Now, Apple is going to ask you to award a lump sum
2 in this case. There is no evidence of what a lump sum would
3 be. We're asking you to award damages up to the time of
4 trial. That's the evidence that's before you.

5 And the reason they want a lump sum is because they
6 want to get off paying for the continued use of these
7 products into the future. A running royalty will allow them
8 to potentially pay for the use that they make of these
9 patents.

10 So I'm asking you to reject Apple's request for a
11 lump sum and to do what the statute says: Give us damages of
12 no less than a reasonable royalty.

13 We know that all patents are not the same. Patents
14 are not eggs.

15 I asked Dr. Stark: For example, a patent that's
16 valid and infringed is far more valuable than a huge number
17 of patents that are either not valid or not infringed. Would
18 you agree with that?

19 And his answer: I would think so.

20 I would think so, too. And these are five patents
21 that are valid and infringed that are standard essential that
22 Apple needs to use in order to sell its products on the
23 networks.

24 These are important patents; they're valuable
25 patents; and we deserve to be paid for them.

1 In fact, Apple has known for a long time that these
2 are quality patents. Mr. Jeff Risher, their director of
3 licensing, who, by the way, is another Apple employee who
4 couldn't come to the trial, couldn't come here and testify.
5 Fortunately, we had his deposition.

6 There's a different kind of likelihood for Nokia
7 than for other people that they have valid and enforceable
8 standard essential patents.

9 He knows Nokia was a pioneer in this business. He
10 knows these are good patents. That's why he didn't come here
11 and take the witness stand and tell you why he didn't license
12 these patents.

13 He knows they're at risk, and they are at risk,
14 because these are high-quality, fundamental patents.

15 So what should the royalties be? We did two
16 calculations of royalties based on different royalty rates.

17 And the important thing here to understand is those
18 five license agreements that Mr. Weinstein used, those are
19 FRAND license agreements, fair, reasonable, and
20 non-discriminatory.

21 So this idea about allocating or cutting down some
22 on those, first of all, you didn't hear any expert testify --
23 you didn't hear anybody testify about that. But those
24 numbers in those license agreements are reliable numbers that
25 you can rely upon for your decision in this case.

1 Mr. Weinstein took those numbers and came up with a
2 royalty range from \$84 million to \$101 million.

3 Now, here's something that's pretty interesting.
4 Those licenses were negotiated at arm's length with the
5 patentholder claiming infringement and Apple saying that the
6 patents were invalid and not infringed.

7 There was never a determination on any of those
8 license agreements that there was actual infringement or that
9 the patents were invalid.

10 For the purposes of damages in this case, you are
11 required by law to assume that these patents are valid and
12 infringed. And, in fact, we've shown you that these patents
13 are valid and infringed. They're standard essential. Apple
14 needs them to sell their products.

15 That makes Mr. Weinstein's numbers pretty
16 conservative.

17 Now, everybody always thinks that the Plaintiff's
18 numbers are inflated because juries compromise.

19 Apple knows that, at least that's what they
20 believe. That's why they put a 500,000-dollar number up.
21 They think, if they make their number low enough, you're
22 going to compromise somewhere in between. 50 million. 60
23 million.

24 Don't do it. There's no reason to do that. These
25 damage numbers are conservative considering the quality of

1 these patents and the massive amount of infringement that's
2 occurred in this case.

3 At the end of this case, I wish you God speed in
4 determining your verdict. You need to find infringement of
5 all claims.

6 Apple is a willful infringer.

7 And damages of at least \$101 million, which is
8 reasonable royalty damages up to the time of trial.

9 I want to thank you very much for your time in this
10 case. You are the reason that this system works. You're the
11 reason that a company like Apple can't just stonewall us and
12 refuse to talk to us forever.

13 Your Honor, I'd like to reserve the rest of my
14 time.

15 THE COURT: All right. We'll now hear closing
16 arguments from the Defendant in the case, Apple.

17 MR. MUELLER: Thank you, Your Honor.

18 May I proceed?

19 THE COURT: You may.

20 MR. MUELLER: Good afternoon.

21 It's my last chance to talk to you, and I want to
22 start by thanking you on behalf of myself, Ms. Vreeland, Mr.
23 Albritton, and Mr. Casanova.

24 It's been a lot of information over the last week,
25 and you've paid close attention, and we appreciate that. We

1 appreciate that, because when you pay attention, you learn
2 the facts.

3 And we believe the facts strongly support us in
4 this case, and we very much appreciate the care that you've
5 brought to your service as jurors.

6 We've tried to help as much as we can by bringing
7 you a 25-year employee of Apple, Mr. Casanova, sitting right
8 here; a 33-year professor from the University of Michigan,
9 Dr. Wayne Stark; the chairman of the Department of Electrical
10 and Computer Engineering at Rice, Dr. Knightly. They are
11 teachers, and they were here to assist you as best they could
12 in understanding the technology.

13 We also brought you Dr. Stephan Schell, the
14 recently retired chief wireless architect at Apple, and many
15 other witnesses by videotape.

16 Any time you saw a witness by videotape, including
17 during Core Wireless's case, that included our designations,
18 as well.

19 And I respectfully submit to you that every witness
20 who testified by video, supported our side of the case.

21 Now, His Honor has given you the law that binds us
22 all. And in my remaining time with you, I'm going to review
23 the facts.

24 I'm going to calmly and respectfully walk through
25 the evidence piece-by-piece. I'm going to use real documents

1 that were introduced into evidence.

2 I'm going to give you the exhibit numbers. I'm
3 going to give actual testimony that you heard. I'm going to
4 show it to you. I'm going to use a couple of slides that you
5 saw.

6 At the end of the day, it's the facts and the law
7 that His Honor has given you that must determine this case.

8 And I'm going to try my best to review those facts.

9 Now, as you consider the facts on issue after
10 issue, I ask that you bring your common sense to this
11 process. That's one of the most valuable attributes you have
12 as jurors, your good judgment and your common sense. And on
13 issue after issue, Core Wireless's case fails basic common
14 sense.

15 For the '143 patent, which claims a selection
16 process occurring in the phone, they're trying to accuse a
17 process in which it occurs in the network.

18 And you've seen the signaling diagrams. In the
19 accused products, it happens on the right. In the patent,
20 it's on the left. Left is not the same as right. And that's
21 just basic common sense.

22 For the '022 and '664 patents, the claims require a
23 finite length filter, and there's no dispute that the accused
24 standard has an infinite filter. Finite is not the same
25 thing as infinite. And, again, that's just common sense.

1 For the '321 patent, the patent requires two and
2 only two channels. The actual standard uses far more than
3 two channels. More than two is not the same as two, and
4 that's just common sense.

5 For the '850 patent, the patent requires a virtual
6 time transmission interval between different transmissions,
7 and it's used for slowing down transmissions.

8 Well, as you've seen, the real standard isn't
9 trying to slow down anything; at all and it doesn't use this
10 virtual technique. The virtual approach is not the same as
11 the real approach, and, again, that's just common sense.

12 Now, those are just the beginning of the problems
13 with the patents, and we're going to discuss additional
14 problems in a bit. But the critical issue at the heart of
15 this case is whether these patents cover portions of the
16 standard created by the European Telecommunications Standards
17 Institute.

18 You've seen these boxes over here. It's 18 boxes
19 or more for the full standard. And the question at the heart
20 of this case is do these five patents cover portions of the
21 standard?

22 And you know the process by which that standard was
23 created. You've heard it from witness after witness.

24 Companies get together and send their engineers.
25 They make proposals in writing -- written proposals. Those

1 are considered, along with alternatives, and then they're
2 voted on.

3 And if you have a proposal that's accepted and
4 that's voted on in favor of the proposal, it becomes part of
5 the standard. If it matches your patent, you now have a
6 standard essential patent.

7 If you don't have a proposal that's voted on and
8 accepted into the standard and that matches your patent, you
9 don't. It's as simple as that.

10 The only other way you can get a standard essential
11 patent is by luck, and there's been no argument in this case
12 about luck.

13 The argument is that Nokia was there, Nokia
14 participated. But you've seen no proposal in writing at any
15 point in this case that was accepted by ETSI and that matches
16 the patents. Not one.

17 So why are we here?

18 Well, the facts begin in late 2010 and early 2011.
19 Nokia was beginning to struggle in the marketplace. It had
20 been the largest seller of cell phones.

21 But it was beginning to struggle thanks to some new
22 competition from Apple and other competitors. And it began
23 to explore a partnership with Microsoft which they eventually
24 entered into.

25 And part of that partnership involved a plan, a

1 plan to use some old Nokia patents to make some money.

2 In March 2011, someone from Microsoft contacted Mr.
3 Lindgren here and asked for a secret meeting. And at that
4 meeting, they let him know that they wanted to enforce some
5 Nokia patents. They let him know that they were looking for
6 a fight.

7 Who was the target? Well, Mr. Lindgren told us
8 that at the very first meeting, the name Apple came up.

9 Now, let's get a few things straight right now. As
10 a general matter, there's nothing wrong with patents at all.
11 Patents can be a great thing. They can protect innovations.

12 And properly used, Apple has no quarrel with the
13 patent system whatsoever. There's nothing wrong with
14 licensing patents or joining with others to license patents;
15 or when all else fails, enforcing patents in court. There's
16 nothing wrong with any of those things.

17 There is something wrong with being misleading.
18 There is something wrong with demanding money for unwanted
19 bottom-of-the-barrel patents that no one is using.

20 You heard during Mr. Casanova's cross-examination,
21 Mr. Ward suggested that Apple is throwing stones in a glass
22 house and referred to the Rockstar licensing collaboration
23 that included Apple and some other companies, including
24 Microsoft.

25 Core Wireless has not suggested that Rockstar did

1 anything wrong, and the facts have made clear that Apple is
2 not living in a glass house or talking out of both sides of
3 its mouth or anything else.

4 Apple believes in the patent system and believes in
5 licensing and believes in collaborations with other
6 companies. But it must be done in the right and proper way,
7 not by misleading other folks about what you're doing and not
8 by asserting patents that are not used by anyone and
9 demanding unfair royalties for them. That's wrong.

10 And what's even more -- what's even worse is
11 feeling entitled to do all those things.

12 Now, let's review the facts. At the same time
13 these secret meetings were occurring between Microsoft and
14 Conversant and Nokia, there was a whole other negotiating
15 unfolding. Apple was negotiating Nokia for a cross license.
16 You heard all the details about how that happened.

17 Mr. Lindgren admitted in cross-examination that
18 negotiation for the cross license occurred at the very same
19 moment in time that this plan was being set in motion against
20 Apple.

21 So think about that. On the one hand, you have
22 Nokia negotiators at the table with Apple negotiating a cross
23 license. And they know that they've been having meetings
24 with Microsoft and Conversant to target Apple. But they say
25 not one word about any of that, not a word about Microsoft, a

1 word about Conversant, a word about Core Wireless.

2 On the other side, you have Apple, who is trying to
3 negotiate a cross license and, in fact, it eventually was
4 concluded and they're told not a thing.

5 Now, eventually the agreement was concluded between
6 Apple and Nokia. It's Defendant's Exhibit 119. In that
7 agreement, Nokia received the right to certain Apple patents.
8 And Apple received the right to certain Nokia patents. It
9 was a cross license. Apple agreed to pay some money to Nokia
10 as part of the deal.

11 And during Mr. Casanova's examination, we walked
12 you through some parts of that agreement and showed you the
13 license grant from Nokia to Apple.

14 And you saw, that as part of that deal, Apple
15 received the rights to essential patents that Nokia had for
16 the standards that were -- have been created by ETSI,
17 including the very same standards in this case.

18 So all this talk about Core Wireless -- I'm sorry,
19 all this talk by Core Wireless about Nokia being a cellular
20 pioneer and having strong cellular patents, ignores a simple
21 fact, Apple has a license. It's right here. You can read
22 it. It's Defendant's Exhibit 119. They have a license to
23 the essential patents that Nokia claimed to have.

24 We're not talking about those patents in this case.
25 We're talking about a different set of patents, the divested

1 patents that were transferred over to Core Wireless, the
2 unwanted, unused, never proposed or proposed and rejected
3 patents. Those are the patents that we're dealing with in
4 this case, not the stronger patents that Nokia kept and Apple
5 licensed.

6 So let's review a few facts about the patents in
7 this case.

8 First, Nokia never said that Apple infringed them
9 during the license negotiations. You know that. You saw the
10 testimony from the Nokia licensing executives by videotape.

11 They admitted they had never even seen these five
12 patents. It's pretty tough to accuse someone of infringing
13 patents that you've never seen. But you heard them ask
14 one-by-one had they seen these patents, and they hadn't.

15 You've also seen references to these correspondence
16 between Nokia and Apple, and Mr. Bunsow just mentioned some
17 in his closing argument just a few moments ago. You can take
18 a look at these if you'd like. They're Plaintiff's Exhibits
19 46 and 47. Try to find the patents. These are lists of
20 hundreds and hundreds of patents.

21 The five patents in this case are not marked out in
22 any way. They're not identified as infringed. There's no
23 claim chart. There's nothing there. These are just long
24 lists of declared essential patents. And, again, you can
25 look at them, Plaintiff's Exhibit 46 and 47.

1 Now, they say on each page of that list "declared
2 essential," but you know that declared essential doesn't mean
3 actually essential.

4 Mr. Toskala admitted that. Dr. Olivier admitted
5 that. Mr. Chandler admitted that. Mr. Lindgren admitted
6 that. Mr. Weinstein admitted that. You're not entitled to
7 money just because you declare yourself that your patents are
8 essential. You have to prove it.

9 Second, for those who participated in creating
10 standards, you know the rules. You make a proposal. It's in
11 writing. There's a written document that reflects it.
12 There's a vote; and if it's accepted, it becomes part of the
13 proposal.

14 If there were any Nokia proposal that had matched
15 the patents and had been accepted, you would have seen it.

16 But over the course of this one-week trial, you
17 never once saw a written proposal voted on, accepted, made
18 part of the standard. You never saw that.

19 Now, it is absolutely true that in my opening
20 statement, I told you: We're going to bring you Dr. Michael
21 Walker, the former chairman of the board of ETSI, and it is
22 also true that he was here all week.

23 And there's a reason why we didn't call him, and
24 the reason is the rules were undisputed. Everyone agreed on
25 them. We wanted to wrap this case up and get it to you as

1 quickly as possible, because that was an uncontested point,
2 how these rules operate.

3 Mr. Toskala agreed. Dr. Olivier agreed. There was
4 no disagreement. The way the process works is you make a
5 written proposal, a vote is taken; and if it's voted on and
6 accepted, it becomes part of the standard. That's what
7 Dr. Walker would have told you, but you'd already heard it.

8 Now, the best that Core Wireless has done is to
9 have Mr. Toskala come to you from Nokia in this case to
10 testify that he thinks proposals were adopted, or so he says
11 to you. He's a paid fact witness, paid more per hour than
12 Mr. Chandler or Dr. Olivier. But at trial, he came here and
13 told you these proposals were made and adopted.

14 Now, again, this is where you bring your common
15 sense to bear, your good judgment to bear, to evaluate Mr.
16 Toskala's credibility on this critical claim. He had never
17 once said that, before he arrived at trial. But he arrives
18 at trial; and all the sudden, he says the patents had been
19 accepted into the standard.

20 Well, how do we know that he's right? There's not
21 a shred of evidence to support his account. His books don't
22 support his account. They never mentioned the patents. Not
23 the first edition, the second edition, the third edition, or
24 any edition. No mention of the patents whatsoever.

25 Dr. Olivier and Mr. Chandler admitted they weren't

1 relying on Mr. Toskala or his books.

2 Now, if -- if he really had this information, if he
3 really knew that there were proposals made that supported the
4 patents that were accepted, why didn't he tell Mr. Chandler?
5 Why didn't he tell Dr. Olivier? Why didn't they have any
6 conversation with him about this?

7 And most important, where were they? Where were
8 these written proposals? If he so vividly recalled them and
9 Core Wireless wanted to rely on his account, where is the
10 proof? Where are the written proposals?

11 They never showed up, and the answer is, they never
12 were made. His account is simply not incredible, not
13 believable. It fails basic common sense.

14 And there's another reason why. Dr. Olivier and
15 Mr. Chandler testified to us that the only proposal they
16 remembered was Mr. Vialen's proposal for the '143 patent,
17 which was rejected; and Dr. Olivier conceded exactly that.

18 Mr. Chandler admitted during cross-examination that
19 he hadn't identified any proposals at all.

20 So we have the two lead technical experts for Core
21 Wireless coming to you, the Ladies and Gentlemen of the Jury,
22 and one expert, Dr. Olivier, can only identify a rejected
23 proposal, and Mr. Chandler identifies no proposal at all.

24 That's the evidence. That's their opinions that
25 they offered to you in support of Core Wireless's claims.

1 Mr. Toskala told us that when Nokia had truly
2 essential patents, they prepared claim charts, which would
3 have the claim language on the left and the evidence on the
4 right.

5 Well, again, we never saw a claim chart. There was
6 never a Nokia claim chart brought to you in this case. The
7 documents, once again, were not there to support the claims
8 being made.

9 The inventors themselves did testify, but they
10 couldn't recall anything about the patents.

11 Do you recall that series of inventors that you
12 heard by videotape? One after the other couldn't remember
13 their patents, couldn't remember the inventions, couldn't
14 remember the supposed benefits, one after the other.

15 The bottom line is that these are not essential
16 patents. They were never proposed or they were proposed and
17 rejected. They are unwanted and unused patents,
18 bottom-of-the-barrel patents that Nokia divested into a plan
19 to target Apple.

20 Nokia kept its better patents, and those patents
21 are licensed pursuant to the cross license with Apple. This
22 is the divested set. This is the never proposed or proposed
23 and rejected set.

24 Now, the up-front payment made by Conversant is
25 actually a pretty good indicator of their value. It was

1 about \$20,000 for about 2,000 patents for like \$10 a patent.

2 Now, Mr. Lindgren here accused me of being
3 dishonest when I told you that the up-front payment was
4 \$20,000 for those 2,000 patents.

5 And, in fact, you know I told the truth. And you
6 know I told the truth because I proved it to you using their
7 own words, their public securities filing made to their own
8 investors at a time when the company was called MOSAID.

9 And if you look at this document, you can see that
10 they told their inventors that MOSAID paid just \$19,975 up
11 front to buy Core Wireless. That's exactly what I told you.

12 Now, was there more to the deal? Of course there
13 was, and we'll go through those facts in a moment. But one
14 fact is the up-front price paid was about \$10 a patent, and
15 they're now seeking \$100 million for five of them.

16 Now, as for the rest of the deal, Conversant agreed
17 to take on the effort to license or enforce these patents;
18 and according to Mr. Lindgren, they've spent over \$30 million
19 in licensing and litigation efforts, including, presumably,
20 for the folks here at this table.

21 If Core Wireless doesn't hit -- or if Conversant
22 doesn't hit certain targets, there can be consequences; and
23 you know what those consequences could be, including a
24 financial penalty.

25 Well, let's see how much success they've had thus

1 far in this campaign they've mounted to license these
2 patents.

3 Question: But as of today, not a single company
4 has signed a license, correct?

5 Answer: Correct.

6 Not one. We have the entire industry being told
7 that these are standard essential patents.

8 As Mr. Bunsow just said, everyone must use them.
9 They're part of the standard. But no one, no one has signed
10 up to use them.

11 Now, think about that. We've been told at this
12 trial that these patents are wonderful. They improve battery
13 life. They do all sorts of great things. You can't practice
14 the standard without them.

15 And Conversant is pouring millions of dollars into
16 this licensing campaign. Yet no one, no one in the industry
17 has licensed these patents. If they were really that good,
18 wouldn't one company have taken a license?

19 Now, look, Mr. Lindgren here is a sophisticated
20 licensing attorney; and Conversant, as he's told us, is very
21 experienced in these matters. And its principal owner is
22 Sterling Partners, a private equity firm.

23 These are experienced investors, but the fact is
24 they made a bad deal. They bought a fight that they couldn't
25 win, a fight with bad patents that aren't actually being

1 used.

2 That was their decision, and they should bear the
3 responsibility of that decision. They are not entitled to
4 demand money from Apple for a mistake that they made; yet
5 that is what they are asking you to do.

6 In February of 2012, Core Wireless sued Apple
7 without even the courtesy of a phone call or an email
8 beforehand. It issued a press release the same day. You've
9 seen that press release.

10 They sued first, and they issued the press release
11 to put pressure on Apple, to try to get Apple to pay money to
12 go away. And then and only then the letters started. And
13 let's talk a little bit about those letters.

14 They're written in strong language, and
15 Mr. Lindgren and Mr. Bunsow gave us a dramatic reading of
16 them last week. But facts speak louder than words, and let's
17 review the facts.

18 To begin, these letters were written by Phil Shaer.
19 You saw him testify at the very end of the case. He was that
20 witness who testified by videotape right near the end.

21 He said he couldn't explain the inventions in a
22 million years. And he admitted that Apple didn't need to
23 license the whole portfolio. Yet he sent self-righteous
24 letters in which Core Wireless demanded billions of dollars
25 from Apple. And that's how much their demands translated

1 into.

2 And there's a more fundamental problem. The
3 letters were based on an assumption that Core Wireless was
4 entitled to money, entitled to quick responses, entitled to
5 Apple meeting Core Wireless's demands, entitled to have Apple
6 disprove infringement.

7 And look at some of the back-and-forth between Mr.
8 Bunsow and Mr. Lindgren. The questions were posed to Mr.
9 Lindgren as if -- as if Apple had to disprove infringement
10 just because Core Wireless had sued them and sent some
11 letters.

12 Well, that's not how it works. The burden is on
13 Core Wireless -- and Mr. Lindgren here is a lawyer and he
14 understands that.

15 The burden is on Core Wireless to prove
16 infringement. They have to actually prove their case before
17 they can recover a penny, and they've never done that.

18 Apple didn't have to disprove infringement or
19 respond at the drop of a hat because Core Wireless said so.

20 But, in fact, we did disprove infringement, and we
21 did communicate with Core Wireless.

22 In these supposed gaps that you saw in the
23 timeline, Mr. Bunsow and I were communicating, as well as our
24 respective teams. Mr. Lindgren admitted that.

25 Now, you've seen Ms. Vreeland and Mr. Albritton and

1 I for a week now, and I think you can see that we take these
2 sorts of claims very seriously and we -- we investigate the
3 facts very deeply.

4 And if there's an argument put to you that Apple is
5 saying it had no -- saying things for which it had no basis,
6 you should judge the credibility of that claim.

7 Bottom line is these letters prove nothing,
8 absolutely nothing. The burden is on Core Wireless to show
9 actual facts to support their claim.

10 Now, in addition to all the communications that we
11 had, Apple did write back. And in 2014 actually offered
12 \$200,000 to make them go away -- to make this burdensome
13 litigation go away.

14 Was it an acknowledgement of infringement,
15 absolutely not. And Mr. Lindgren conceded exactly that. He
16 knows it wasn't. It was an attempt make a burdensome
17 litigation go away.

18 In fact, can you read the letter. It's Plaintiff's
19 Exhibit 63, and it lays out all the problems with Core
20 Wireless's case on the merits, on the facts, and I encourage
21 you to read it.

22 But Core Wireless chose to persist with this case
23 with these bottom-of-the-barrel patents, and here we are.
24 And now the burden is on Core Wireless to actually prove it
25 to you.

1 So how did they try to -- to meet their burden at
2 this case? First, who did they call to testify? No one from
3 Core Wireless. Not a single person from the actual Plaintiff
4 in this case took the stand, no one.

5 They did call Dr. Olivier and Mr. Chandler and Dr.
6 Smedley, all professional testifying experts in litigation.
7 But here's the remarkable thing. They had the chance to come
8 back to you a second time during what's known as a rebuttal
9 case.

10 They could come back and explain why they believe
11 Dr. Knightly and Dr. Stark were wrong if they sincerely
12 believed that they were wrong, but they never did. They
13 never came back and told you that Dr. Knightly and Dr. Stark
14 were wrong on one issue. They could have, but they didn't.

15 During this trial, Core Wireless has never targeted
16 anything that makes Apple's products different or special.

17 It's accusing chips -- baseband chips that are
18 supplied by Qualcomm and Intel.

19 Now, I mention that not to make an excuse. Apple
20 stands by every part in it products, and that certainly
21 includes the baseband chips. But the fact that they're
22 accusing the baseband chips speaks to a very interesting
23 issue.

24 If their theory was right and if they were -- truly
25 had these standard essential patents, then every baseband

1 chip that practices those standards would also infringe the
2 patents. Because every phone has a baseband chip. Every
3 phone has that component that supports the standard.

4 So if the theory was right, then every phone
5 manufacturer who uses the standards would have to take a
6 license.

7 But, again, as of today, not a single company has.
8 The industry has spoken as to the credibility of the theory
9 that they're offering to you, and not one company has
10 validated and agreed with what they're saying.

11 Now, at several points during the trial, Core
12 Wireless made a big deal out of Dr. Smedley looking at source
13 code. He actually testified on the standard only for a few
14 minutes, and the code just showed that the products support
15 the standards.

16 Same thing with the CETECOM testing. Showed that
17 Apple's products support the standards.

18 The real issue here is whether the patents actually
19 covered the standards and whether certain optional parts of
20 the standards or out-of-date parts of the standards are still
21 being used. And on those critical questions, Core Wireless's
22 case falls apart.

23 Let's go through the patents one-by-one.

24 '143 patent covers a process for making a selection
25 process -- a selection decision, I should say, in the phone.

1 The asserted claims are 17 and 21, both of which
2 require doing a comparison process for basis of channel
3 selection. That's the claim language and the words matter.

4 But not only that, His Honor has given us his
5 interpretations of the claims and we're all bound to follow
6 those to the letter. He set out the function and the
7 structure that we're required to have.

8 Part of it is channel selection is advantageously
9 performed in the control unit 803. Channel selection.

10 That's what His Honor said, channel selection. Not
11 the decision to report. Not the decision to send the
12 measurement report. Channel selection, part of the required
13 structure.

14 Control unit 803 is in the phone. There's no
15 dispute about that. Everything on the left-hand side of this
16 figure is in the phone. The right-hand side is the base
17 station that you'd see on the side of the road.

18 That's what Mr. Vialen proposed to ETSI in
19 Defendant's Exhibit 232. In his approach, which you've seen
20 several times, the decision is made on the left-hand side in
21 the user equipment or cell phone side of the signaling
22 diagram in the phone.

23 In the actual standard, the -- the decision is made
24 at the network side on the right. That decision is made on
25 the right. Left doesn't equal right, but more fundamentally,

1 the phone is not the same as the network.

2 The proposal was rejected, and there's no
3 infringement. And, in fact, Dr. Olivier admitted that the
4 proposal was rejected, and he also admitted that rejected
5 proposals are not part of the standard.

6 Now, let's talk about the '022 and '664. The
7 asserted claims in these patents all require a filter with
8 finite length.

9 Now, Mr. Bunsow just told you a few moments ago,
10 the patents cover both infinite and finite filters. They
11 don't. They cover finite length fighters.

12 The claims say that the word "finite." Finite does
13 not mean the same thing as infinite.

14 You have to follow the actual claim language that
15 was chosen by the inventors, and they chose the word
16 "finite."

17 You've seen, in fact, where they chose it. The
18 Patent Office rejected the claims that didn't have that
19 restriction, and they added it. A filter having a finite
20 filter length. They chose those words. Infinite does not
21 mean the same thing as finite, and that's just basic common
22 sense.

23 Now, there's another problem with these claims, as
24 well. Every claim in the patent requires something called an
25 indication of signal quality; and what Dr. Olivier has

1 identified as meeting that requirement, is called
2 BEP_period2.

3 Now, BEP_period2 is not actually in the patent. So
4 if you look through the patents -- I encourage you to do
5 so -- you'll never see the word "BEP_period2" anywhere.

6 But, moreover, Dr. Olivier conceded -- well, he
7 first conceded that the filters were infinite. We can all
8 agree on that. But he also conceded that the BEP_period2
9 parameter could be created for a variety of reasons. Didn't
10 necessarily have anything to do with signal quality at all.

11 And then he went on to concede that he had no
12 evidence that anyone anywhere in the U.S. was actually using
13 it. So take that claim and think about it for a minute. We
14 have them asserting patents in this case and asking for \$101
15 million.

16 And, in fact, Mr. Weinstein said his theory would
17 apply even if you only found one patent infringed. \$101
18 million for one patent. And their technical expert says
19 there's no evidence that this BEP_period2 is even being used.

20 The argument is the products are capable of using
21 it, but how can you be capable of using something that's
22 never being sent? And how important can this be if no one is
23 even using it?

24 So their case fails on multiple levels for the
25 '022/'664. But, again, it fails at the level of basic common

1 sense.

2 Next patent is the '321 patent. This covers a
3 transmitter which uses two and only two channels.

4 As you've seen, the Apple products do not use two
5 and only two channels. The inventors had to say they used
6 two and only two channels to get the patent out of the Patent
7 Office.

8 This is a representation they made to the Patent
9 Office to distinguish themselves from certain older prior
10 art, including from Qualcomm. They said exactly two
11 channels.

12 The problem is the Qualcomm chips and the Intel
13 chips have eight channels, and eight is a lot more than two.
14 Dr. -- or Mr. Chandler admitted that, during
15 cross-examination by Ms. Vreeland. In this testimony you see
16 on the screen, he conceded that both the Qualcomm chips and
17 the Intel chips have eight channels.

18 So the only way they can get to two is to zero out
19 six of them.

20 But there's a problem there, as well. You can't
21 zero out channels for purposes of infringement, but then not
22 zero out channels for purposes of invalidity.

23 So if you're going to zero them out, that means the
24 patent is invalid because the older prior art, including the
25 Qualcomm prior art, had more than two channels. If you zero

1 them out there, you end up invalidating the patent.

2 Dr. -- Mr. Chandler couldn't get his story straight
3 on this. It changed over the course of the trial, and he
4 never came back to you in rebuttal to explain himself.

5 What's more, the theory about how the products
6 could sometimes perhaps maybe use two channels was based on
7 the 1999 version of the standard that was in place for about
8 six months. You can see the sentence that Mr. Chandler was
9 relying on right here.

10 Here's the standard on the left that he's relying
11 on. It was changed six months later to make clear that the
12 standard was going to use more than two channels.

13 So he needs to show that someone now, years and
14 years later -- and remember, the iPhone was introduced in
15 2007, eight years later -- was still using this outdated
16 approach from 1999. And he can't show that. He never did.

17 And this is an important point. You were told just
18 now that Dr. Stark had no opinion on this issue; and, in
19 fact, you saw his opinion on this issue. It's right here.
20 This is an excerpt from his report.

21 Quote: Nowhere in his report does Mr. Chandler
22 provide actual proof showing that any of these mechanisms
23 were actually carried out by accused Apple products with
24 Qualcomm baseband processors to simultaneously transmit
25 exactly two channels.

1 And then he went on to say the same thing for the
2 Intel chips. So his opinion was there's no evidence of this
3 actually being used. That's exactly what he told you. It's
4 entirely consistent.

5 Not only that, Dr. Smedley said the same thing.

6 During cross-examination, he admitted he had found
7 no evidence of actual use on two and only two channels.

8 So at the end of the day, we have no proof that
9 anyone is doing this theory they've articulated. And even if
10 they were, it would only work for them if they zero out
11 channels. And zeroing out channels creates invalidity
12 problems.

13 So they can't have it both ways. Mr. Chandler
14 could have tried to reconcile it, but he never did. He never
15 came back and took the stand in rebuttal.

16 Now, there's other problems as well. Dr. Stark
17 explained how, beyond the two channels issue, Apple's
18 products don't use two spreading codes. They use a single
19 complex scrambling code.

20 And on issue after issue, it's Core Wireless's
21 burden to prove infringement; and on issue after issue, for
22 the '321 patent, they've fallen short.

23 The last patent is the '850. The inventors claimed
24 they came up with a new way of slowing down transmissions.

25 You can see the title of the patent: Slow.

1 Slowing down transmissions using this virtual TTI.

2 And they said that by doing this -- or Core
3 Wireless has told you that by doing this, you could save
4 battery life. Well, again, there's problem after problem
5 with the case.

6 The first problem is, what they're accusing is
7 something called uplink DRX, and Mr. Chandler admitted that
8 there's no battery savings from using that uplink DRX.

9 What's more, uplink DRX is not covered by this
10 patent.

11 Now, Mr. Bunsow tried to ask Dr. Knightly some
12 questions in his cross-examination to suggest the idea came
13 from Nokia. He was using a document that had a Nokia
14 indicator on it.

15 But, in fact, Nokia was the reporter of some ideas
16 of others. And as Dr. Knightly explained, uplink DRX was
17 proposed by Ericsson. Not Nokia. Ericsson.

18 Once again, there's no evidence of any proposal by
19 Nokia that matches the patents in the case.

20 The actual uplink DRX is right here. It's two
21 paragraphs out of these 18 boxes of paper. These are the two
22 paragraphs they're accusing.

23 Dr. Knightly explained to you how it works.
24 There's a timer to keep track of inactivity. It's an
25 inactivity timer, not a virtual TTI. And if the phone is

1 inactive, it has to wait for a new MAC cycle, one of the
2 black bars in this figure. But it can transmit as much as it
3 wants any other time.

4 There's no reference to virtual TTIs anywhere, and
5 there's no need to wait a predetermined period of time. It
6 doesn't meet the patent. There's no infringement.

7 Now, for patent after patent in this case, you saw
8 Qualcomm engineer testimony; and time and again, their
9 testimony directly supported the positions we've taken in
10 this case.

11 They told you the phone didn't channel select
12 between dedicated and common channels. They told you they
13 used infinite filters. They told you that there was no use
14 of two and only two channels or two spreading codes. They
15 told you they didn't use virtual TTIs.

16 So the actual folks who built these chips -- which
17 was not Apple, it was Qualcomm for the Qualcomm chips -- came
18 before you by video again and again and directly supported
19 Apple's arguments in this case.

20 Now, one side -- one sign of how far they've tried
21 to stretch -- Core Wireless has had to stretch in this case
22 is this PA Consulting report, which we've heard nothing about
23 until just now, so I won't say much about it either.

24 As you know, the actual entries don't mention the
25 '022 and '664, call the '143 obvious, call the '321 unclear,

1 call the '850 not relevant to one release and might be
2 essential to another; and as you know, the authors of that
3 report didn't have His Honor's claim construction and weren't
4 even looking at the right claims for some of the patents in
5 issue.

6 It's irrelevant to this case. It's a data point
7 that Apple has used in some licensing negotiations. It is
8 not a basis for an infringement claim, and it's been
9 misrepresented to you as such. You should look at the actual
10 entries. They provide no support for the claims in this
11 case.

12 The bottom line, Apple is not infringing any of
13 these patents. And if you find non-infringement, you are
14 done with the patent issues in this case.

15 If you look at the verdict form, if you answer
16 non-infringement, your work is over with respect to the
17 patent issues, and all you would need to address are the
18 contract issues at the end of the verdict form.

19 If you find, however, that the patents -- any of
20 the patents are infringed, you do need to consider
21 invalidity, because the only way any of these patents could
22 be infringed is by stretching them beyond their proper
23 boundaries.

24 And once you do that, they cover prior art, the
25 ideas of others. You can't stretch your patents and move the

1 fence for infringement and then try to escape the
2 consequences for invalidity.

3 So the only way they can get to the Apple products
4 is by stretching them beyond recognition; and once you've
5 done that, they become invalid.

6 But if you find non-infringement, Core Wireless can
7 keep its patents, and your work would be done.

8 Damages. First thing right off the bat, there
9 shouldn't be any damages at all in this case. None. There's
10 no damages for patents that are not infringed and
11 non-essential. None. The right number here is zero.

12 But I do think that looking at their damages claim
13 shows just how far they're stretching. Mr. Weinstein is
14 asking for \$101 million for these five patents that were
15 never proposed or proposed and rejected.

16 And as you saw during the cross-examination of Mr.
17 Weinstein, the way that he accomplishes this is by looking at
18 five Apple licenses, doing an average, a simple average of
19 the amounts made under each, and giving no consideration
20 whatsoever to what was received under those licenses.

21 Those licenses covered hundreds of patents. Mr.
22 Weinstein is suggesting to you that the proper price for the
23 five patents in this case or even four or even three or even
24 two or even one would be the average paid under those
25 licenses for hundreds. It doesn't make any sense.

1 And as you saw during his cross-examination, you
2 can see that even through the simple analogy of eggs. You
3 don't pay -- you pay less when you get less. It's a basic
4 common sense point, but it wasn't used by Mr. Weinstein. And
5 this shows just how unfair and unreasonable they've been.

6 If you were to actually take his approach and
7 adjust it for the number of patents, you arrive at
8 essentially what Dr. Lynde did, \$500,000, about \$100,000 a
9 patent.

10 Now, remember, that would be if they were infringed
11 and valid, because those are the assumptions damages experts
12 need to make under the law when they're conducting a damages
13 analysis. Under that approach, they'd be worth about
14 \$100,000 each or \$500,000 total.

15 But, in fact, the right number is zero, and I want
16 to be very clear about one thing. We're not asking you to
17 compromise. The right number is zero. Zero.

18 THE COURT: Two minutes remaining.

19 MR. MUELLER: Finally, the contract claims. We
20 have proven to you that Core Wireless made a contract to
21 ETSI. They promised to be fair and reasonable and
22 non-discriminatory. And they broke it.

23 One easy way to know they broke it is by taking the
24 quiz that Conversant, the company that Mr. Lindgren is chief
25 executive officer of, set up. Learn to take a stand against

1 bogus patent claims.

2 And if you are to follow that bogus patent claim
3 quiz, you will see that the very second -- I'm sorry -- the
4 third red flag that they raise is: A legitimate claim should
5 suggest licensing first, not litigation.

6 Well, that's exactly what they did here. They sued
7 first. They didn't engage in licensing first. It was a
8 bogus patent claim under their own test. They broke their
9 contract.

10 Not a matter of money. We're not asking for money
11 at all. It's a matter of principle. They broke their
12 contract, and you should find exactly that.

13 This is my last chance now to talk to you. I won't
14 have a chance to respond to Mr. Ward, but I ask that when you
15 listen to him, you keep a couple of things in mind.

16 First, you've been with me for a week. You've been
17 with Ms. Vreeland and Mr. Albritton. Ask yourself, when you
18 hear his arguments: What would Mueller say? What would Ms.
19 Vreeland say? What would Mr. Albritton say? What facts
20 would they point us to?

21 Because at the end of the day, it's the facts that
22 should decide this case. It's the facts that we've tried to
23 focus on from the opening statement until now. It's the
24 facts that we believe support our positions.

25 And ask yourself, when you hear his arguments, what

1 are the things that Ms. Vreeland and Mr. Albritton would
2 point us to on the facts?

3 Second thing is ask yourself some questions. How
4 can left equal right? How can finite equal infinite? How
5 can two channels mean eight? And how can there be a virtual
6 transmission and a real technique that says not a word about
7 it? And how can Core Wireless explain this?

8 It has the burden of proof, as Mr. Lindgren
9 admitted, and as he conceded:

10 Question: No evidence of proposals made to ETSI
11 that match the patents?

12 Answer: Correct.

13 There's no evidence.

14 THE COURT: Your time has expired, Counsel.

15 MR. MUELLER: Thank you.

16 And I, respectfully, request you return a verdict
17 in favor of Apple.

18 THE COURT: All right. We'll hear the Plaintiff's
19 final closing at this time.

20 You may proceed, Counsel.

21 MR. WARD: All right. Let me too thank y'all for
22 your -- your time and your services.

23 Two pieces of good news for you. One is I'm not
24 going to talk about RACH or MAC inactivity levels during the
25 next ten minutes.

1 The last piece of good news is you-all are about to
2 finally get back to the jury room and get to discuss this
3 case. And we're looking forward to hearing your verdict
4 because it's an important case.

5 You can tell it's important because of all the
6 folks that are here watching -- who are watching to see what
7 you-all do with your verdict.

8 What I want to do as we end here is just to give
9 you some -- some things to think about to help you in what
10 might be a difficult decision, because what you just heard
11 was a little bit confusing. And I think that's been Apple's
12 goal during this case is to confuse you and to confuse these
13 issues.

14 The Judge instructed you that you're the sole
15 judges of the credibility of the witnesses and the
16 credibility of the facts. And that's what I want to talk to
17 you about. What are the things that tell you who is being
18 credible? Who is it that's giving you credible evidence?

19 And I want to start off with DX 47.

20 That's the one document that I pulled out in -- in
21 all the documents that have been in this case because I
22 suspected that Mr. Mueller, who knew that he had been caught
23 and told you that Core Wireless had paid \$10 a patent and
24 then there was a fight about that, right?

25 And he just got up here and it looked like he was

1 staring at Mr. Lindgren saying, it was Mr. Lindgren that said
2 that. He's the one who said we only paid \$20,000.

3 Let's flip five pages later in this same document.

4 No -- sorry, Structure of the Deal, Slide 25.

5 Five pages later in that same document, what is Mr.
6 Lindgren telling his inventors? The company pays the
7 licensing program operating costs estimated at 8 million to
8 15 million per year over 10 years.

9 Yet he wants to get up here in front of you and say
10 it was Mr. Lindgren who said these patents were worth \$20,000

11 You can go ahead and take that down.

12 That's the type of credibility question you've got
13 to be asking yourself when you go back to the jury room.
14 Who's telling me the truth? Because Apple has thrown up
15 every defense they can think of.

16 First, they say we don't infringe. But if you
17 don't believe that, then the patents are invalid. If you
18 don't believe that, Core Wireless has breached its contract
19 to us.

20 And now I've heard a new defense because for 25
21 minutes of his 40 minutes, he talked about this grand
22 conspiracy about how patents were held back and Core Wireless
23 was working behind the scenes to work with Nokia and
24 Microsoft.

25 What evidence is there of that? Who from Apple

1 came and said we've been hood-winked?

2 What witness took the stand and said we've been
3 tricked? Because you know this sophisticated company would
4 have filed a counterclaim or some type of claim against Nokia
5 for fraud if that's what it really felt.

6 But that's the story that they'll tell you to try
7 and avoid responsibility for using these patents that they
8 now get up here and say are bottom-of-the-barrel patents.

9 That's lawyer argument. First time we've heard
10 that.

11 So what are the issues? Infringement.

12 Dr. Walker -- well, now they say, oh, well, there's
13 no need to hear from Dr. Walker. Yeah, we told him we were
14 going to bring him. Yeah, he was our first witness. You'd
15 think that might be important to Apple.

16 But once it became apparent that Dr. Walker
17 couldn't refute that these patents were in the standard,
18 Dr. Walker said, Ladies and Gentlemen at Apple, I'm not going
19 to take the stand and lie.

20 These patents are in the standard. Dr. Toskala has
21 proven that. You all need to get me out of this courtroom
22 because that jury -- I'm not going to help you with the jury.
23 You're not going to like what I have to say. And they sent
24 him out of town. That's why Dr. Walker is gone.

25 And they want to talk about Intel and Qualcomm.

1 This is another -- you know, maybe we infringe, but it's the
2 baseband processor so look to Intel and Qualcomm, don't look
3 to us.

4 These patent claims go to the apparatus. Those
5 baseband processors don't operate without the battery, the
6 processor, the amplifier, and the antennas, and they know it.

7 Validity. I can be real brief because they were
8 real brief, weren't they? Maybe a minute, a minute and a
9 half that they told you that these patents were invalid.

10 And they want to say, well, if we infringe, then
11 they're invalid. Right? They say, well, they're stretching
12 the claims. His Honor just instructed you, invalidity is a
13 defense to infringement. They know they infringe.

14 They throw up a quick Hail Mary of, well, they're
15 changing the claims.

16 We're not changing the claims. The Court has given
17 you the constructions for how these claims are to be
18 construed. They're not our claims. They're not Apple's.
19 It's the Court's constructions, and you're to apply them.

20 They certainly haven't met this clear and
21 convincing evidence.

22 And in your verdict form, the first question is
23 infringement. I suggest the answer to all those questions
24 are yes.

25 Questions 2 and 3 are invalidity. I suggest that

1 the correct answer to those questions are no.

2 The fourth question is willful infringement. Apple
3 clearly has known about these patents since 2009 -- since
4 2011 when they were told here are the patents. You need a
5 license to them.

6 Apple did nothing. They never wrote back and said,
7 those divested patents are the bottom of the barrel. We
8 don't need a license to them. They never said anything.
9 They ignored them. They were reckless. They're willful
10 infringers.

11 Damages. As Mr. Bunsow told you at the beginning
12 of this case, this is a case about money because that's all
13 Apple understands. And I want to tell you why.

14 If you -- more evidence is in this verdict form
15 because there's something in here that you-all have never
16 seen before that has never been argued. It's Question 6.
17 Question 5 is damages. Mr. Bunsow told you what we think
18 damages are, \$101 million.

19 But when you get back there, look at Question 6.
20 If you don't write anything else down that I tell you,
21 Question 6 is something that you want to look at.

22 Because that's a question that says: Is the amount
23 of money you found in Question 5 a one-time lump sum for past
24 and future sales or a royalty for past sales only? One box
25 is one-time lump sum. The other is royalty for past sales.

1 I can guarantee you one thing, we don't think the
2 answer is one-time lump sum. That's Apple who wants that in
3 there. That's Apple who wants you to check that box yes,
4 one-time lump sum because these bottom-of-the-barrel patents
5 they tell you about, they want to get a license to them for
6 the life of the patents, not just for past sales.

7 That's Apple putting them in there. These
8 bottom-of-the-barrel patents, they want them. That's proof
9 that they want them. They want you to answer that question
10 yes so that they have a license to these patents. The answer
11 to that question is a royalty for past sales only.

12 Did Apple prove by a preponderance of the evidence
13 that Core Wireless breached its contract? They said that we
14 have somehow breached our contract. You've seen all the
15 opportunities they've had to license these patents, 2009,
16 2011. We notify them once the lawsuit gets filed. We write
17 them for two years.

18 Yet now they want to say we've breached our
19 contract to them. We needed to offer them fair, reasonable,
20 and non-discriminatory rates before we sued them. Mr.
21 Casanova told us what the answer would have been to our
22 question if we had contacted them before.

23 It's the same -- same answer we would have gotten
24 now, and that is we don't want a license to your patents.

25 We're Apple. We're big enough. We've got enough

1 licenses. We don't have to pay for intellectual property
2 anymore. That's their answer. That's their answer to this
3 question.

4 Clearly, we didn't breach any contract to them.
5 They say it's a penny to a dollar the damages they want.
6 They want -- they want authorization to ignore folks, by Core
7 Wireless.

8 THE COURT: One minute.

9 MR. WARD: That's what they're looking for.

10 This is an important case, and you-all are going to
11 get to send a message with your verdict, because at the end
12 of the day when you all return your verdict, if it's today or
13 if it's tomorrow, whenever it is, Apple's in-house counsel
14 who has been sitting here watching this case, they're going
15 to make a phone call.

16 And they're going to make a phone call back to
17 Cupertino, and it's going to be one of two calls.

18 It's going to be we got away with it. Jury said we
19 don't have to negotiate with folks who have portfolios of
20 licenses to valuable intellectual property, keep doing
21 business as usual, keep those early retirement parties going.

22 Or it's going to be we've got to change the way
23 we're doing business.

24 And you-all have an opportunity to decide which
25 call gets made.

1 We hope y'all make the right decision, and we look
2 forward to receiving your verdict.

3 Thank you.

4 THE COURT: All right. Ladies and Gentlemen, I'd
5 like to provide you with a few final instructions before you
6 begin your deliberations.

7 Again, you must perform your duty as jurors without
8 bias or prejudice as to any party. The law does not permit
9 you to be controlled by sympathy, prejudice, or public
10 opinion.

11 All the parties expect that you will carefully and
12 impartially consider all the evidence, follow the law, as I
13 have given it to you, and reach a just verdict regardless of
14 the consequences.

15 Answer each question in the verdict form from the
16 facts as you find them to be. Don't decide who you think
17 should win and then answer the questions accordingly.

18 Your answers and your verdict, I remind you, must
19 be unanimous.

20 You should consider and decide this case as a
21 dispute between persons of equal standing in the community,
22 of equal worth, and holding the same or similar stations in
23 life. This is true in patent cases between corporations,
24 partnerships, and individuals.

25 A patent owner is entitled to protect its patent

1 rights under the United States Constitution. This includes
2 bringing a suit in the United States District Court for money
3 damages for infringement.

4 The law recognizes no distinction among types of
5 parties. All corporations, partnerships, and other
6 organizations stand equal before the law, regardless of size,
7 regardless of who owns them, and they are to be treated as
8 equals.

9 When you retire to the jury room to deliberate on
10 your verdict, you will each have a copy of this charge to
11 take with you. If you desire to review any of the exhibits
12 which the Court has admitted into evidence during the trial,
13 you should advise me by a written note delivered to the Court
14 Security Officer, and I will send that exhibit or those
15 exhibits to you.

16 How -- however, certain documents that were shown
17 to you during the trial are what we call demonstratives.

18 Demonstratives are a party's description, picture,
19 or model that's used to describe something involved in the
20 trial.

21 If your recollection of the evidence differs from
22 the demonstrative, rely on your recollection, because
23 demonstratives are not evidence, and they're not available
24 for you to review during your deliberations.

25 However, a witness's testimony that references a

1 demonstrative is evidence.

2 Once you retire, you should first select your
3 foreperson and then conduct your deliberations.

4 If you recess during your deliberations, follow all
5 the instructions the Court's given you about your conduct
6 during the trial.

7 After you've reached a verdict, your foreperson is
8 to fill in the verdict with your unanimous answers to the
9 questions found therein, date it, sign it, and deliver it to
10 the Court Security Officer, who will bring it to me.

11 Contrary to my earlier instructions, which I gave
12 you repeatedly throughout the trial, now it is your sworn
13 duty to discuss the case among each other to see if you can
14 reach an agreement.

15 Each of you must decide the case for yourselves,
16 but only after a full consideration of all the evidence with
17 the other members of the jury.

18 While you're discussing the case, don't hesitate to
19 re-examine your own opinions and change your mind if you
20 become convinced that you're wrong.

21 However, don't give up your honest beliefs solely
22 because others might think differently or merely to finish
23 the case.

24 Do not reveal your answers until such time as you
25 are discharged, unless otherwise directed by me. And you

1 must never disclose to anyone, not even to me, your numerical
2 division on any question.

3 Any notes that you've taken during the trial are
4 aids to your memory only. If your memory should differ from
5 your notes, then you should rely on your memory and not your
6 notes. The notes are not evidence.

7 And a juror who has not taken notes, should rely on
8 his or her own independent recollection of the evidence and
9 should not be unduly influenced by the notes of other jurors.

10 Notes are not entitled to any greater weight than
11 the recollection or impression of each juror about the
12 testimony.

13 If you want to communicate with me at any time
14 during your deliberations, please give a written message or
15 question to the Court Security Officer, who will then bring
16 it to me.

17 I will then respond as promptly as possible either
18 in writing or by having you brought back into the courtroom
19 where I can address you orally. I will always first disclose
20 to the attorneys in this case your question and my response
21 before I answer your question.

22 After you've reached a verdict and I have
23 discharged you from your service as jurors, I want you to
24 understand that you are not required to talk with anyone
25 about the case unless I order otherwise, which is highly

1 unlikely.

2 However, at that time, when you have been
3 discharged, you will be free to discuss the case with anyone
4 of your choosing.

5 Whether or not you wish to discuss your service as
6 jurors in this case is strictly up to you and you alone. It
7 is your decision alone.

8 I'll now hand eight copies of these final jury
9 instructions and one clean copy of the verdict form to the
10 Court Security Officer, who will deliver them to the jury
11 once they retire.

12 Ladies and Gentlemen, you may now retire to
13 deliberate.

14 We await your verdict.

15 COURT SECURITY OFFICER: All rise for the jury.

16 (Jury out for deliberations.)

17 THE COURT: The Court will stand in recess either
18 awaiting a note from the jury or a verdict.

19 The Court stands in recess.

20 (Recess taken.)

21 (Jury out.)

22 COURT SECURITY OFFICER: All rise.

23 THE COURT: Be seated, please.

24 The Court has received the following note from the
25 jury -- I'll read it for you, Counsel.

1 It says: Can we please have a highlighter? And
2 it's signed by Toby Gowin, who apparently is the Foreperson.

3 And he would have been Juror -- or is Juror No. 8
4 on the panel.

5 My intent, rather than respond to them in writing,
6 is simply to send in two or three highlighters with the Court
7 Security Officer.

8 Does Plaintiff have any objection to that?

9 MR. BUNSOW: No objection, Your Honor.

10 THE COURT: Defendant have any objection?

11 MR. MUELLER: No objection.

12 THE COURT: All right. Mr. Blanton, if you'll come
13 forward, the -- the Courtroom Deputy has three yellow
14 highlighters. If you'll take those into the jury.

15 COURT SECURITY OFFICER: Yes, sir.

16 THE COURT: Also, I will mark this note as
17 Note No. 1, and I'll hand it to the Courtroom Deputy to be
18 filed amongst the papers of this cause.

19 And we will recess awaiting either an additional
20 note or a verdict.

21 I'd like to see lead and local counsel in chambers
22 in the meantime.

23 We stand in recess.

24 COURT SECURITY OFFICER: All rise.

25 (Recess.)

1 (Jury out.)

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Be seated, please.

4 Counsel, we just met in chambers, and I showed you
5 a proposed note to the jury asking whether they wanted to
6 continue to work or whether they wanted to recess for the
7 evening.

8 Counsel on both sides expressed no objection to
9 such a note; and immediately after you left chambers, the
10 Court Security Officer came in and told me that the jury has
11 reached a verdict.

12 So the note is no longer necessary.

13 And, Mr. Blanton, if the jury is ready, please
14 bring them in.

15 COURT SECURITY OFFICER: Yes, sir.

16 All rise for the jury.

17 (Jury in.)

18 THE COURT: Please be seated.

19 Mr. Gowin, I understand that you're the Foreperson
20 of the jury; is that correct?

21 FOREPERSON: Yes, sir.

22 THE COURT: Has the jury reached a verdict?

23 FOREPERSON: We have.

24 THE COURT: All right. In that case, would you
25 hand the signed and dated jury verdict form to the Court

1 Security Officer who will bring it to me.

2 Ladies and Gentlemen of the Jury: I'm going to
3 announce the verdict at this time. And I'd like to ask each
4 of you to listen very carefully because after I've announced
5 the verdict, I'm going to ask each of you if this is your
6 verdict so that we can confirm on the record that it is
7 unanimous.

8 Turning to the verdict form, I first note on the
9 last page that it is date -- dated today's date, March the
10 16th; and it's signed by Mr. Gowin as the Jury Foreperson.

11 Turning to Page 2 of the verdict form, Question 1:

12 Did Core Wireless prove by a preponderance of the
13 evidence that Apple infringed the following claims of the
14 following patents:

15 Patent '143, Claims 17: No.

16 Claim 21: No.

17 '664 patent, Claim 14: No.

18 Claim 16: No.

19 Claim 17, no.

20 The '022 patent, Claim 7: No.

21 Claim 9: No.

22 Claim 10: No.

23 The '321 patent, Claim 14: No.

24 The '850 patent, Claim 1: No.

25 Claim 10: No.

1 Claim 21: No.

2 And Claim 27: No.

3 Question 2 is not answered per the instructions in
4 the verdict.

5 Question 3 is not answered per the instructions in
6 the verdict.

7 Question 4 is not answered per the instructions in
8 the verdict.

9 Question 5 is not answered per the instructions in
10 the verdict.

11 Question 6 is not answered per the instructions in
12 the verdict.

13 Question 7: Did Apple prove by a preponderance of
14 the evidence that Core Wireless breached its contractual
15 obligation to license the patents-in-suit on a fair,
16 reasonable, and non-discriminatory, FRAND, basis?

17 The answer is: No.

18 Question 8 is left blank because they answered
19 Question 7 no.

20 Again, the verdict form is signed today's date,
21 March the 16th, 2015 and executed by the foreperson of the
22 jury, Mr. Toby Gowin.

23 Ladies and Gentlemen, let me poll you at this time
24 and make sure that the verdict that I just read is the
25 unanimous verdict of all eight members of the jury.

1 If this is your verdict as I have read it, would
2 you please stand at this time?

3 Thank you. You may be seated.

4 Let the record reflect that all eight members of
5 the jury immediately rose and stood in response to the
6 Court's question to poll the jury.

7 Ladies and Gentlemen, this now completes the trial
8 of this case. From the very beginning, I repeatedly
9 instructed you about not discussing the case with anyone and
10 not discussing it among yourselves until you retired to
11 deliberate.

12 I'm releasing you from those obligations, and I'm
13 discharging you from your duty as jurors in this case.

14 You're now free to talk about your service as
15 jurors and your experiences in this case to anyone
16 yourselves, among yourselves, members of your family, members
17 of the community, your friends, anyone you choose to discuss
18 it with.

19 But by the same token, you are equally free not to
20 discuss it with anyone or not to say anything to anybody
21 about it at all.

22 It is completely and solely your decision, each
23 member of the jury personally for yourselves.

24 I know that the lawyers here on both sides will be
25 interested to talk to you if you want to talk to them.

1 However, you need to understand that the Court's
2 practice is they cannot come up to you and initiate a
3 conversation about your service as jurors.

4 If you want to talk with any of the lawyers in this
5 case, you will have to initiate a conversation with them.
6 They will not initiate a conversation with you.

7 Also, Ladies and Gentlemen, I want to let you know
8 how much the Court appreciates your service as jurors in this
9 case. This is an important case to both parties. This has
10 been a difficult week. You have shown great concentration,
11 great focus.

12 I see a lot of juries, and you have done a -- a
13 great job in watching the witnesses, considering the
14 evidence, viewing what's been placed on the screens before
15 you, listening to my instructions. I commend each and every
16 one of you for the job you serve -- the job you've rendered
17 as jurors in this case.

18 I tell juries every time I have a lawsuit like this
19 that I am privileged to preside in, that there are certain
20 pillars to the citizenship of each and every American; and
21 one of those important pillars is jury service when you're
22 called. And each of you have responded admirably --
23 admirably and have served exceptionally in this regard, and
24 you have the sincere appreciation of the Court, the Court
25 staff, the members of the -- the members of the bar that are

1 here, and everyone present.

2 Our system just couldn't simply work without your
3 participation and your dedication. And as I told you at the
4 beginning of this process, you have done very real and
5 significant public service; and every one of you should feel
6 very justly proud about what you've done in this case.

7 One other thing before I let you go, it's my
8 practice since I've been on the bench after I receive a
9 verdict and discharge the jury, that before you leave the
10 courthouse, I ask you to go back to the jury room for just a
11 couple minutes and give me the opportunity to come in and
12 shake each one of your hands in person and tell you
13 face-to-face how very much I appreciate the service that
14 you've rendered.

15 You're not under any obligation to do that. You
16 have been discharged as jurors. You're free to leave. But
17 if before you would leave, if you'd give me just a couple
18 minutes, I will not keep you long, but I believe that what
19 you've done warrants and justifies a word of personal thanks
20 from the Court and an opportunity to shake your hands and let
21 you know that these are just not empty words; that I very
22 much, on behalf of myself, my staff, and the court as an
23 institution, we very much appreciate what you've done.

24 So if you're agreeable, I'll ask you to retire to
25 the jury room, and I'll be in in just a minute to thank you,

1 and you can be on your way.

2 Again, you're not required to wait; but if you
3 would do me that personal privilege, I'd appreciate it.

4 With that, Ladies and Gentlemen, you're discharged
5 in this case from your responsibilities as jurors; and if
6 you'll do me that privilege, I'll see you in the court -- in
7 the jury room in just a minute.

8 COURT SECURITY OFFICER: All rise for the jury.

9 (Jury out.)

10 THE COURT: Counsel, for the record, I'm going to
11 hand the original and an executed verdict form to the
12 Courtroom Deputy. We'll make it a part of the papers in this
13 case.

14 That completes the trial of this case. Counsel,
15 thank you for your hard work. This case is at a conclusion,
16 and you are excused.

17 (End of trial.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of our abilities.

/s/ _____
SHEA SLOAN, CSR, RPR
Official Court Reporter
State of Texas No.: 3081
Expiration Date: 12/31/16

March 16, 2015

/s/ _____
SHELLY HOLMES, CSR, TCRR
Deputy Official Court Reporter
State of Texas No.: 7804
Expiration Date 12/31/16